

see briefs in 2476 ⁶
No. 2477

United States
Circuit Court of Appeals

For the Ninth Circuit.

MERCHANTS & INSURERS' REPORTING
COMPANY, a Corporation, and BANKERS'
FIRE INSURANCE COMPANY, a Corpora-
tion,

Appellants,

vs.

F. A. JONES, Intervenor, and LYSANDER CAS-
SIDY, as Receiver of the BANKERS' FIRE
INSURANCE COMPANY, a Corporation,

Appellees.

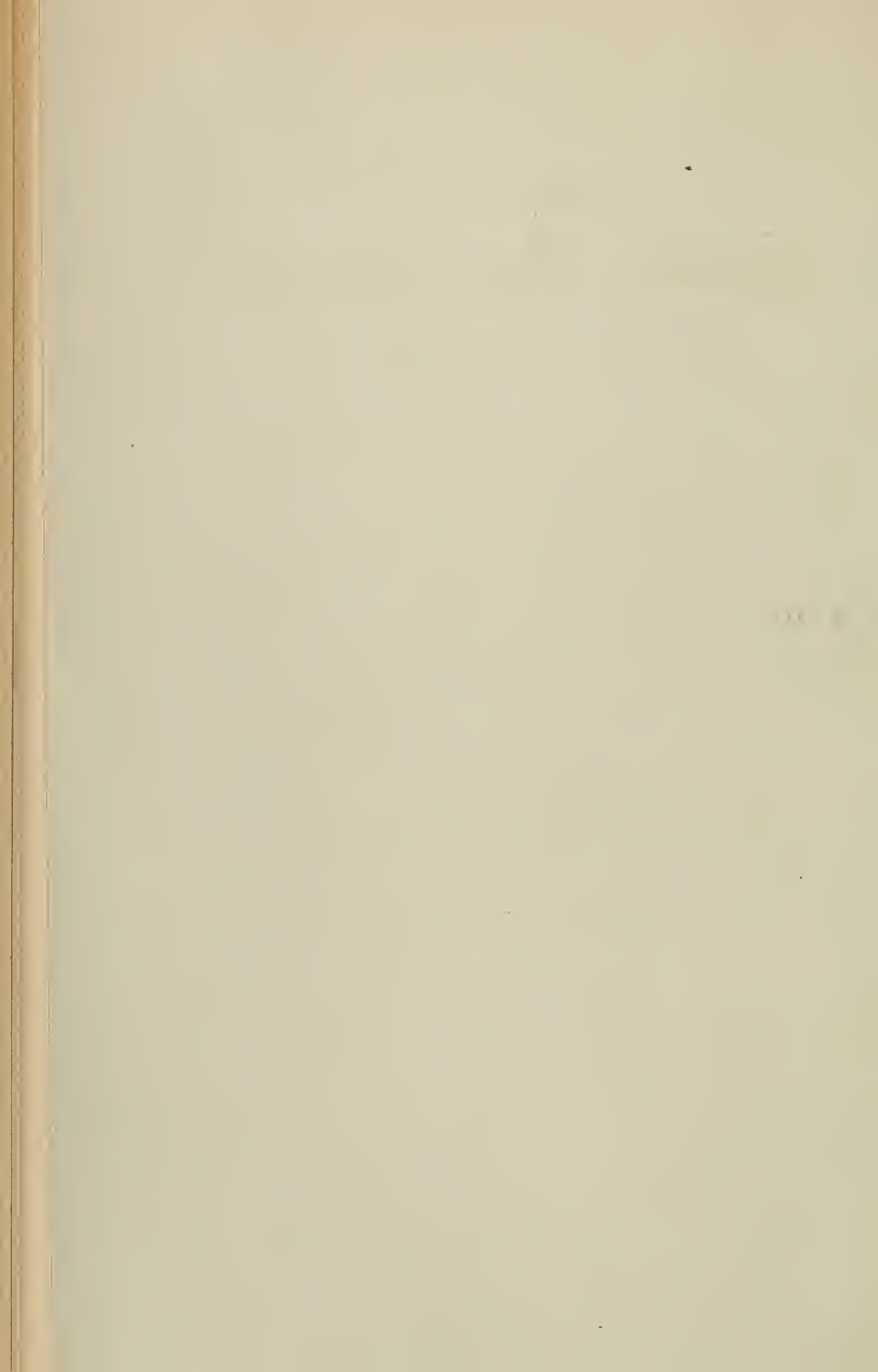
Transcript of Record.

Upon Appeal from the United States District Court
for the District of Arizona.

Filed

SEP 22 1914

F. D. Monckton,
Clerk.



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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[Complaint.]

*In the United States District Court for the District
of Arizona.*

IN EQUITY.

MERCHANTS AND INSURERS' REPORTING
COMPANY,

Complainant,

against

BANKERS' FIRE INSURANCE COMPANY,
Defendant.

To the Honorable WILLIAM H. SAWTELLE,
Judge of the District Court of the United States
for the District of Arizona:

Complainant, Merchants and Insurers' Reporting Company, a corporate citizen of the State of California, duly organized and existing under and by virtue of the laws of said State, and having its office and place for the regular transaction of business in the city of Los Angeles, State of California, brings this its bill against the defendant Bankers' Fire Insurance Company, a corporate citizen of the State of Arizona, having its principal office and place of business in the city of Phoenix, in the State of Arizona.

Your complainant alleges that this suit is one of a civil nature in equity where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of three thousand dollars, and is between citizens of different States, that is to say, between the complainant as a corporate citizen of the State of California, and the defendant as a corporate citizen of the State of California.

And therefore your complainant complains of the defendant and alleges:

I.

At all times hereinafter mentioned complainant was and now is a corporation duly organized and existing under and by virtue of the laws of the State of California, a corporate citizen thereof and resident therein, and an inhabitant thereof, [2*] having its office and place for the regular transaction of business in the city of Los Angeles in the State of California. And your complainant alleges that the defendant above named at all times hereinafter mentioned was and now is a corporation duly organized under and by virtue of the laws of the Territory of Arizona and now existing under and by virtue of the laws of said State, and is a citizen of the State of Arizona, a resident and inhabitant thereof, and having its principal place of business in the city of Phoenix in said State and district aforesaid.

II.

That under and by virtue of the charter of the plaintiff above named, plaintiff was authorized to acquire, hold and own stock in other corporations, and pursuant to such authority your complainant acquired by purchase in or about the month of December, 1909, all of the capital stock of the defendant above named, consisting of two thousand (2,000) shares of the par value of one hundred (\$100.00) dollars each, and that your complainant has ever since remained the owner and holder of all of said capital stock in fact and of record on the books of said de-

*Page-number appearing at foot of page of original certified Record.

fendant, except as to four shares of capital stock in the defendant, which said four shares have from time to time been issued to persons for the purpose of enabling said persons to qualify and act as directors of the defendant company, and that as to these shares your complainant alleges that it is the equitable owner thereof. And your complainant alleges that at the present time Leroy H. Civile is the owner of record of one share of stock in the defendant company and the president and a director thereof, and that at the present time Harry A. Davis is the secretary and treasurer and a director thereof and the holder or owner of record of one share of stock therein, and that C. S. Feldman is the vice-president and a director of the defendant and the holder of one share of the capital stock, of record, in said company. And that the other of said four shares [3] stands of record on the books of said defendant company in the name of John H. Hilgen, a former director and officer of said defendant company, which said share of stock through an inadvertence has not been surrendered to the complainant for cancellation. Your complainant further alleges that the defendant company was by its charter authorized to conduct and engage in the business of a fire insurance company and that pursuant to the authority and power so conferred upon the defendant the defendant heretofore wrote or caused to be written a large number of insurance policies insuring the holders thereof against loss occasioned by fire.

III.

Your complainant further alleges that in and by

chapter forty-nine (49) of the Session Laws of Arizona, 1912, Regular Session, it was, among other things, provided by the terms of section 15 thereof that whenever any corporation theretofore or thereafter organized or incorporated under the laws of the State of Arizona shall revoke or attempt to revoke the appointment of a *bona fide* resident of said State as its agent upon whom all notices or processes may be served without duly appointing another in its place, or whenever at any general or special meeting of the stockholders of any such corporation the holders of a majority of its outstanding stock represented or voting at any such meeting shall have directed the disposal of all corporate assets, or that the corporation be dissolved or that it cease to use or exercise its corporate franchises, or whenever the directors or officers or managing board of any such corporation being thereto authorized or directed by a majority of the outstanding stock thereof representing or voting at any general or special meeting thereof shall have disposed of all corporate assets or dissolved or attempted to dissolve or secure the dissolution of such corporation, or shall have done or attempted to do any of the aforesaid, or when any such corporation shall have disposed of all its property and assets, then and in or on each, every [4] or any one of the foregoing causes, situations, provisions or conditions, either the attorney general of the State or any resident thereof, or any such corporation, or any stockholder or officer of any such corporation may bring, prosecute and maintain, either in the name of the attorney general or in his own name an action in

any court of record of this State to have and procure a judicial dissolution and disincorporation of all rights, privileges and franchises, and wherever it is made to appear to any such court by petition or complaint of any of the aforesaid parties that any one of the above-named causes, provisions, situations or conditions exists in respect to such corporation, such court shall forthwith order or cite such corporation to appear before it and if upon hearing of trial it is made to appear that any one of said causes, conditions, situations or provisions exist, such court shall thereupon dissolve and disincorporate such corporation and forfeit and annul each and every of its rights and privileges and franchises.

IV.

Your complainant alleges on information and belief that on or about the 24th day of October, 1913, the directors of the defendant company, at a meeting by them, regularly called and held, resolved to revoke the appointment of the resident agent in Arizona for the service of process upon the defendant, and in and by said resolution and the acts of said directors the defendant revoked or attempted to revoke the appointment of such agent without duly appointing or appointing at all another in its place. That moreover at a special meeting of the stockholders of the defendant company the holders of more than a majority of its outstanding stock represented and voting at such meeting, to wit, all of the capital stock thereof except one share therein, directed that the said defendant corporation be dissolved and that it cease to use or exercise its corporate franchises, and

that the directors and officers of said defendant company were at said stockholders' meeting by like vote directed [5] to dissolve and to secure the dissolution of such corporation. And your complainant further alleges that, pursuant to the stockholders' resolutions aforesaid and the directions therein contained, thereafter and on the same day, to wit, October 24th, 1913, a directors' meeting of the defendant above named was duly called and held and that it was unanimously resolved by said directors that the said defendant should immediately cease to use and exercise its corporate franchises and that it should immediately dissolve and disincorporate itself pursuant to the provisions of the laws of the State of Arizona, and pursuant to equity and good conscience. And your complainant further alleges in this connection that none of the causes, conditions, situations or provisions hereinbefore set forth, or any of them, have been fraudulently procured for the purpose of defrauding either the creditors of the stockholders of such corporation or any other persons or corporations.

V.

Your complainant further alleges, as separate and further grounds for the dissolution of the defendant company in this Honorable Court, irrespective of the provisions of the statute hereinbefore set forth, that it is and at all times herein mentioned has been the equitable owner of all the assets of the defendant corporation, and further, that until on or about the 21st day of October, 1913, the defendant had issued and outstanding policies of insurance aggregating in

amount approximately — hundred thousand dollars. And upon information and belief your complainant alleges that many of the risks insured by said outstanding policies were dangerous in character and liable to result in great and serious loss both to the defendant company and to your complainant herein if continued in full force and effect, and that for the protection not only of your complainant and of the defendant but of the said outstanding policy-holders in the defendant company on or about the 21st day of October, 1913, the defendant company, with the full knowledge, consent and assistance [6] of your complainant herein, caused all of the risks so outstanding in the name of the defendant and known by the defendant and its officers to be outstanding in its name, to be reinsured and underwritten by an insurance company known as The Fireman's Fund, which said last named corporation is and for a long time prior hereto has been, as your complainant is informed and verily believes, a corporation duly authorized to do and transact the business of fire insurance within the State of Arizona and State of California. And your complainant alleges on information and belief that the said corporation known as The Fireman's Fund is a corporation of great financial strength and one amply able to discharge and pay any and all losses which may arise or occur in connection with the underwriting and reinsurance of the policies heretofore outstanding in the defendant company. And complainant further alleges that the defendant corporation has no debts or other liabilities known to your complain-

ant other than those which appear in the schedule hereto annexed and made a part hereof as though set forth at length, and marked exhibit one. And your complainant further alleges that the major part of the assets and properties of the defendant corporation consist of negotiable instruments almost all of which are made by residents of the State of California, and that your complainant, being the equitable owner thereof, is greatly and seriously embarrassed and hampered in the collection thereof or in making such provision as it deems for its best interest to secure, extend or compromise the payment thereof by reason of the fact that at the present time the defendant company is the legal owner thereof; and as a further reason and ground upon which your complainant seeks and asks the dissolution of the defendant above named your complainant alleges that its rights as the equitable owner of, in and to the negotiable instruments and its other assets now in the possession of the defendant company will be seriously and dangerously jeopardized unless the said defendant be forthwith speedily dissolved, and its assets distributed to those lawfully entitled thereto. [7]

And forasmuch, therefore, as the complainant is without remedy in the premises except in a court of equity where matters of this kind are cognizable, and to the end that the said defendant may be required to answer this complaint, but not under oath, the answer under oath being hereby expressly waived, your complainant prays the Court to grant to it process by subpoena directed to the defendant above named

commanding it to be and appear before this Honorable Court to answer all the allegations of the bill herein at a time and place as therein directed, and your complainant further prays that upon a final hearing of this cause that it be ordered and decreed that the defendant company above named be adjudged to be dissolved and disincorporated and that it cease to use and exercise any and all of its corporate franchises, and that its assets and liabilities be ascertained and determined, and that its assets after the payment of its just debts be distributed to those lawfully entitled thereto, and that for the purpose of dissolution the present directors of the defendant above named, viz., the said Leroy H. Civile, H. A. Davis and C. S. Feldman, and each of them, be constituted trustees of the properties of the defendant above named for the purpose only of the dissolution thereof and the winding up of its said affairs under such bond, if any, as to the Court may seem right and proper; and that if prior to the final hearing in said cause or at any time thereafter the exigencies of the said cause may require it or the rights of the parties hereto be benefited thereby, a receiver of the defendant above named be appointed herein, and that the writ of injunction issue out of this Honorable Court to restrain and prohibit the doing of such acts as may prejudice, defeat or impair the rights of your defendant herein; and for such other and further relief and for general relief in the premises as to this Honorable Court may seem meet and proper, and

your complainant will ever pray.

F. C. STRUCKMEYER,

JOSEPH S. JENCKES,

Solicitors for Complainant. [8]

BANKERS' FIRE INSURANCE COMPANY.

October 1, 1913.

ASSETS.

Bills receivable.....\$191,900.00

(Being notes of various
stockholders of Merchants
& Insurers' Reporting
Co., given in part pay-
ment of subscriptions to
stock in said company and
in most instances secured
by certificates of stock in
said Merchants & Insur-
ers' Reporting Co. as
collateral.)

Furniture and fixtures..... 815.82

Notes secured by mortgage.. 5,250.00

Real estate..... 700.00

Cash on hand and in bank... 6,849.67

Certificate of deposit..... 3,000.00

(Issued to National Surety
Co. for the purpose of
being used as security
on proposed bond to re-
lease attachment. Case
was settled and C. D. not
used for that purpose.)

\$208,515.49 \$208,515.49

LIABILITIES.

Capital stock outstanding.	\$200,000.00	
Reinsurance reserve on policies.....	unknown	
(since reinsured)		
Total Oct. 1, 1913.....	\$200,000.00	
Due Sloan, Seabury & Westervelt of Phoenix, for legal services (bill rendered since Oct. 1, 1913).....	562.50	
Due E. L. Manning of Phoenix for services (bill rendered since October 1, 1913).....	75.00	
Claimed by F. A. Jones of Phoenix for services as President and cash advanced as General Agent to Phoenix Fire Underwriters jointly with this company prorated between the two and not admitted to be due (Claim presented since October 1, 1913).....	293.30	
Surplus.....	7,584.69	
	\$208,515.49	\$208,515.49

Current liabilities incurred during October, 1913, not above included, do not exceed \$1,000.00. [9]

[Endorsements]: No. E-15. In the United States District Court for the District of Arizona. Merchants and Insurers' Reporting Company, Complainant, against Bankers' Fire Insurance Company, Defendant. Bill of Complaint in Equity. Filed Oct. 25, 1913, at — M. George W. Lewis, Clerk. By E. D. Botts, Deputy. Struckmeyer & Jenckes, Solicitors for Complainant, 414-16 Goodrich Building Phoenix, Arizona. [10]

District Court of the United States, for the District of Arizona.

IN EQUITY.

MERCHANTS & INSURERS' REPORTING
COMPANY,

Complainant,

vs.

BANKERS' FIRE INSURANCE COMPANY,
Defendant.

Answer.

Defendant, answering the complaint of the complainant herein, admits the truth of each and every allegation therein contained.

WHEREFORE, defendant joins in the prayer of the complainant above-named as set forth in said complaint herein, and prays that it may forthwith be dissolved according to law.

SLOAN, SEABURY & WESTERVELT,

Solicitors for Defendant,
Fleming Building, Phoenix, Arizona.

[Endorsements]: E.-15. United States District Court, District of Arizona, Merchants & Insurers' Reporting Company, Complainant, vs. Bankers' Fire Insurance Company, Defendant. Answer. Filed Oct. 25, 1913, at — M. George W. Lewis, Clerk. By E. D. Botts, Deputy. Sloan, Seabury & Westervelt, Fleming Building, Phoenix, Arizona. [11]

[Minutes of Court—November 12, 1913—Trial.]
In the United States District Court for the District of Arizona.

MINUTE ENTRY APPEARING UNDER DATE
 OF NOVEMBER 12, 1913.

E.-15.

MERCHANTS & INSURERS' REPORTING
 CO.,

Complainant,

vs.

BANKERS' FIRE INSURANCE COMPANY,
 Defendant.

Comes now the complainant herein, by its counsel, Struckmeyer & Jenckes, Esquires, and in support of its plea for the dissolution of the defendant corporation, introduces in evidence, H. A. Davis, who was duly sworn and examined, and filed nine exhibits, viz.: Exhibits "A," "B," "C," "D," "F," "G," "H," and "I," and thereupon the complainant rested its case; and the defendant herein, by Sloan, Seabury & Westervelt, Esquires, its counsel, joined in said prayer for dissolution and thereupon the defendant

rested its case. Whereupon the Court takes the matter under advisement until a future day hereof. [12]

**[Minutes of Court—November 25, 1913—Order
Dismissing Application for Authority to
Consummate Contract for Reinsurance, etc.]**

*In the United States District Court for the District
of Arizona.*

MINUTE ENTRY APPEARING UNDER DATE
OF NOVEMBER 25, 1913.

E.-15.

MERCHANTS & INSURERS' REPORTING
CO.,

Complainant,

vs.

BANKERS' FIRE INSURANCE COMPANY,
Defendant.

The application of the complainant, dated November 21st, 1913, for authority to consummate the contract for reinsurance heretofore made and to distribute amongst the defendant's stockholders all of defendant's assets, saving only such sum as the Court may deem to be sufficient to discharge all outstanding and unpaid debts of defendant, together with all costs and expenses of this suit, including counsel fees, having been argued by counsel and submitted to the Court for its decision, it is ordered that the said application be and the same is hereby dismissed without prejudice. [13]

**[Minutes of Court—December 13, 1913—Order
Setting Cause for Hearing.]**

*In the United States District Court for the District
of Arizona.*

MINUTE ENTRY APPEARING UNDER DATE
OF DECEMBER 13th, 1913.

No. E.-15.

MERCHANTS & INSURERS' REPORTING
CO.,

Complainant,

vs.

BANKERS' FIRE INSURANCE COMPANY,
Defendant.

IT IS ORDERED that this case be set for hearing
on December 20th, 1913, on the petition of F. A.
Jones to intervene. [14]

**[Minutes of Court—December 20, 1913—Order
Granting Leave to F. A. Jones to Intervene,
etc.]**

*In the United States District Court for the District
of Arizona.*

MINUTE ENTRY APPEARING UNDER DATE
OF DECEMBER 20, 1913.

No. E.-15.

MERCHANTS & INSURERS' REPORTING
COMPANY,

Complainant,

vs.

BANKERS' FIRE INSURANCE COMPANY,
Defendant.

IT IS ORDERED that leave be given to counsel for the petitioner to intervene herein to file the amended petition of F. A. Jones, praying for leave to intervene in this cause. [15]

*In the United States District Court for the District
of Arizona.*

MERCHANTS & INSURERS' REPORTING
COMPANY,

Complainant,

vs.

BANKERS' FIRE INSURANCE COMPANY,
Defendant.

**Amended Petition of F. A. Jones for Leave to
Intervene.**

Comes now F. A. Jones for himself and all other stockholders similarly situated, by Mr. George J. Stoneman and Mr. Reese M. Ling, attorneys at law, at Phoenix, Arizona, and makes and files this, his amended petition, for leave to intervene in the above-entitled action, and for grounds of said petition states:

I.

That at all times mentioned in the bill of complaint filed herein, he was and now is a stockholder of and in the Merchants & Insurers' Reporting Company, named as complainant in said bill, to the extent of 50 shares of stock, and that at all of said times there were a large number of other stockholders in said company. [16]

II.

That in addition to the shares of stock so by petitioner owned and held in said company, he represents by written authority the following stockholders owning the following number of shares in said company, to wit:

Name.	Address.	Shares.
H. C. Norris,	Los Angeles,	100
R. R. Hutchins,	Los Angeles,	50
E. C. Ebert,	Los Angeles,	25
R. E. Carter,	Los Angeles,	25
W. S. Allen,	Los Angeles,	100
John Otto,	Los Angeles,	5
Chas. Winsel,	Los Angeles,	50
Hugo Schroeder,	Los Angeles,	200

III.

That it appears that on the 25th day of October, 1913, the complainant herein filed its bill of equity in this court against the defendant herein, alleging, among other things, that the complainant was and is a corporation organized and existing under the laws of the State of California, and that the defendant was and is a corporation organized under the laws of the State of Arizona; and that said complainant is the owner of all of the capital stock of the defendant and that said complainant is the owner of all of the assets of the defendant; and that said complainant is the equitable owner of certain negotiable instruments and assets in the name of said defendant and that the said complainant will be seriously jeopardized unless the defendant is forthwith enjoined from carrying on any further business and

the assets of said defendant be rightfully distributed, and that said bill in equity prays that the defendant be dissolved under the directions of this Court, to which bill the defendant has made answer admitting all of the allegations thereof [17] and joined with the complainant in praying that the Court grant the relief sought.

IV.

That since on or about the month of February, 1913 the defendant company has not been engaged in the conduct of any business except the collection of certain outstanding notes, and that large amounts of money have been expended by the officers of said defendant in salaries of the officers and traveling expenses; that ever since said month of February 1913, the officers of said defendant have been drawing large sums of money from the treasury of said company for alleged services and have paid out large sums of money to attorneys as attorneys' fees, and that said officers of said company have expended large sums of money for alleged traveling expenses all of which said allowances and amounts have been expended from the funds of defendant company and to the great loss of the stockholders of said company. That at a stockholders' meeting of said complainant, a majority of the stockholders or over two-thirds of the issued stock of the complainant was represented, and at said time it was agreed by said stockholders and the officers elect that a dissolution of the defendant should immediately take place, and that the officers elected at said time pledged themselves and agreed with the stockholders

that a dissolution of said defendant should be speedily obtained and that the assets of said company should be distributed to those entitled by law to receive the same; that since said time the officers of said defendant company have wasted the assets of said company, and have grossly mismanaged the affairs of said company to a large extent and have wholly failed to take any steps toward a dissolution [18] of said defendant before the institution of this action, and on or about the 15th day of September, 1913, various stockholders of the complainant herein filed a petition with the Arizona Corporation Commission, at the city of Phoenix, setting forth certain facts and praying that said Corporation Commission take such steps and make such order or orders as would prevent the carrying on of any further business of the defendant and would take such other steps as would be beneficial to your petitioners herein, and to the complainant and the defendant; and that the reason for the filing of said petition was to secure the aid and assistance of the Arizona Corporation Commission in taking such steps as would cause the dissolution of the defendant, and the carrying out of the agreement and understanding entered into by and between the officers of the defendant and its stockholders and prevent any further dissipation of the funds of said defendant; which said petition is hereto attached and made a part hereof and prayed to be read in connection with this petition.

V.

That notwithstanding the fact that the officers elected at said stockholders' meeting held in the

month of July, 1913, as aforesaid, agreed to and with the stockholders that immediate steps would be taken by them to secure the dissolution of the defendant herein, and the winding up of its affairs in an orderly and proper manner, no action was taken by said officers until the institution of this action, when for the purpose of carrying out a plan and scheme for further dissipating and expending the resources of the defendant and thus depriving your petitioner and all of the other stockholders of the complainant and the owners of the [19] assets of the defendant the bill in equity herein was filed, and in said bill certain officers of said company, and the ones who have been instrumental and engaged in the dissipation of the funds and assets of the defendant are asked to be by this Honorable Court constituted trustees for the purpose only of a dissolution of said defendant and the winding up of its said affairs.

WHEREFORE, your petitioners pray that inasmuch as it appears from the record in this cause that both complainant and defendant desire that an order of dissolution be made dissolving the defendant and providing for the distribution of its assets to those lawfully entitled thereto, your petitioners desire and pray the Court that they may be permitted to intervene and be joined as defendants in this action and request that they may be permitted to join in the prayer of the petition to the extent that a receiver be appointed by this Honorable Court under the rule thereof, who shall be empowered to speedily and without great expense, directed to properly administer the affairs of the defendant to the end that it

assets shall not be further dissipated, and your petitioner will ever pray.

GEORGE J. STONEMAN,
REESE M. LING,
Solicitors for Petitioners. [20]

To the Corporation Commission, Phoenix, Ariz.

In Re Bankers' Fire Insurance Company.

Gentlemen:

WE, THE UNDERSIGNED, stockholders of the Merchants and Insurers' Reporting Company, respectfully submit this, our petition, and beg that your commission will see fit to grant the relief prayed for.

We beg to submit the following facts:

1. That the stock of the Bankers' Fire Insurance Company is, with the exception of four (4) shares, all owned by the Merchants and Insurers' Reporting Company; that the stock of the Bankers' Fire Insurance Company was purchased by the Merchants and Insurers' Reporting Company by putting up One Hundred Ninety-five Thousand (\$195,000.00) Dollars in notes and Five Thousand (\$5,000, 00) Dollars in cash; the notes having been given by the stockholders of the Merchants and Insurers' Reporting Company for stock in that corporation; that none of said notes have been collected.

2. That since about February, 1913, the Bankers' Fire Insurance Company has been doing no business whatever, except to attempt to collect the above mentioned notes; that large amounts of money have been spent by the officers of that corporation, according to a report of their financial condition to the real

22 *Merchants & Insurers' Reporting Co. et al.*

owner of the company,—the Merchants and Insurers' Reporting Company; that the officers of the Bankers' Fire Insurance Company are: Leroy H. Civile, President, H. A. Davis, Secretary and Treasurer, and C. S. Feldman, Vice-president; that only one share of stock is held by each officer to qualify them to act as a director.

3. That according to the financial condition of the Company [21] on June 30, 1913, the Bankers' Fire Insurance Company, owned the following property.

Mortgages.....	\$ 5,250.00
Real Estate.....	700.00
Furniture and Fixtures....	800.00
Cash, approximately.....	11,500.00
Stockholders' Notes.....	191,900.00

Total.....\$210,150.00

4. That on June 24, 1913, H. A. Davis and Leroy H. Civile drew for alleged services, each, One Hundred Sixty-six and 67/100 (\$166.67) Dollars; that said officers also drew Two Hundred Fifty (\$250.00) Dollars each for alleged services; that on May 21, 1913, said officers paid Sloan, Seabury and Westervelt, Two Hundred Fifty (\$250.00) Dollars; that on June 30, 1913, said officers paid the same persons for alleged attorneys' fees Two Hundred Fifty (\$250.00) Dollars; that on May 21, 1913, said officers claim to have expended Three Hundred Ninety-eight and 23/100 (\$398.35) Dollars for traveling expenses and for hotel bills; that H. A. Davis has put in bills which have been allowed for at least One Hun-

dred Fifty (\$150.00) Dollars for trips from Phoenix, Arizona, to Los Angeles, Cal., and that said Civile and Davis have put in further claims for Four Hundred Twenty-five (\$425.00) Dollars traveling expenses, all of which have been paid; that there is in the hands of the Board of Directors of the Merchants and Insurers' Reporting Company at Los Angeles, Cal., an itemized statement which contains a great many other items of expense which your petitioners cannot enumerate, but which appear on the books of the Bankers' Fire Insurance Company.

5. That the total amount of surplus on June 30, 1913, amounted to Ten Thousand One Hundred Fifty (\$10,150.00) Dollars, and that as against this the company was the insurer of over a million dollars' worth of property; that said company, although not doing any business, has never had said insurance policies rewritten, and that should there be any material fire losses in the near future, not only will the surplus which is being used [22] by the said officers aforesaid, be eaten up, but the Merchants and Insurers' Reporting Company, and eventually the stockholders, your petitioners, be forced to pay large amounts out of their pockets to cover said losses.

6. That owing to the peculiar condition of the by-laws and the law in Arizona relating to corporations, the Merchants and Insurers' Reporting Company have found it impossible to remove the board of directors of the said Bankers' Fire Insurance Company and that while all the stock, with the exception of said four (4) shares is owned by the Mer-

chants and Insurers' Reporting Company and the said board of directors of the Merchants and Insurers' Reporting Company are under the control of the stockholders of that company and may be removed on a vote of $\frac{2}{3}$ of the stock of said Merchants and Insurers' Reporting Company, yet the said directors of the Bankers' Fire Insurance Company are taking steps and doing acts which are entirely against the wishes of the real owners of that company and unless restrained will cause great and irreparable loss to the undersigned.

7. *That the* annual stockholders' meeting in July, 1913, over $\frac{2}{3}$ of the stock of the Merchants and Insurers' Reporting Company was represented and the stockholders voted to elect officers who would pledge themselves to cause a dissolution of the said Bankers' Fire Insurance Company; that said Leroy H. Civile and H. A. Davis were present and acquiesced in said agreement to dissolve the said Bankers' Fire Insurance Company; that the subsequent action of those officers has convinced the undersigned, that such action was not contemplated, and that it is the intention of said officers to undertake to launch a fire insurance company under the laws of the State of Arizona, with what assets the Bankers' Fire Insurance Company has at present, and to apply to your Honorable Board for a license to transact such business, and we respectfully [23] submit that the attempted collection of the \$191,900.00 in notes held by the company and which were signed by the stockholders of the Merchants and Insurers' Reporting Company, will result in numerous and costly law-

suits, as there is no intention on the part of a great many of the makers of said notes to pay the same unless forced to do so, if that can be done, in courts of law; that the wishes of a majority of the stockholders of the Merchants and Insurers' Reporting Company is that the Bankers' Fire Insurance Company be dissolved at the earliest possible moment and that the constant drawing on the resources of the company be stopped; and your petitioners cite the *following instance to who of the tremendous loss* and trouble which may be occasioned your petitioners, to wit: J. E. Youtz in 1908 executed eleven of the promissory notes, which have been until recently, held by the Bankers' Fire Insurance Company; that as security for said notes, which were issued for stock of the Merchants and Insurers' Reporting Company; that said J. E. Youtz put up as collateral security the certificates of stock issued therefor; that after the annual stockholders' meeting of the Merchants and Insurers' Reporting Company in July, 1913, the officers of the Bankers' Fire Insurance Company were instructed and agreed not to dispose of any of the notes of the stockholders of the Merchants and Insurers' Reporting Company; that notwithstanding this the said officers, Leroy H. Civile and H. A. Davis proceeded to hire attorneys in the city of Los Angeles and assigned all of said notes executed by J. E. Youtz to one Williams, an employee in the offices of the attorneys aforesaid; that said Williams proceeded to sell the certificates of stock of the said J. E. Youtz at a pretended sale, and sold the same for the sum of \$10.50; that the said Williams thereupon pro-

ceeded to bring an action in the Superior Court of the County of Los Angeles, State of California, for the sum of \$11,000.00, alleging that even the \$10.50 had been used up for the expenses of the pretended [24] sale; that unless some action is taken, the said Board of Directors of the Bankers' Fire Insurance Company will undoubtedly proceed with the same action in regard to the notes held by your petitioners; that the above example was repeated in the case of another stockholder, one J. C. Belton; that with the lawsuits now pending and impending your petitioners feel that not only are the board of directors of the Bankers' Fire Insurance Company violating the trust and confidence reposed in them by your petitioners, but that unless your Honorable Board takes some action to restrain and enjoin the Bankers' Fire Insurance Company from transacting any business whatsoever in the future, that the corporation will suffer great and irreparable loss.

WHEREFORE, your petitioners pray that your Honorable Board issue such order as may be deemed meet in the premises, and especially to restrain the board of directors of the Bankers' Fire Insurance Company from carrying on any further business until such time as your Honorable Board may have had full opportunity to investigate the matter of your petitioner's claim, and to hear the fact in connection therewith; that said Bankers' Fire Insurance Company be ordered to protect the outstanding policies of insurance issued, by having them immediately rewritten in some responsible fire insurance company.

Dated, Los Angeles, Cal., September 15, 1913.

J. E. YOUNTZ.

P. A. PARKER.

WM. H. H. GOODWIN.

C. E. HOLGATE.

G. U. WHITNEY.

SWANFELDT TENT & AWNING CO.

ADAM SWANFELDT,

Pres.

MATHEWS CANDY CO.

A. S. MATHEWS.

E. W. WOOLSEY,

HUGO SCHROEDER,

F. A. JONES. [25]

[Endorsements]: In the United States District Court for the District of Arizona. Merchants & Insurers' Reporting Company, Complainant, vs. Bankers' Fire Insurance Co., Defendant. Amended Petition of F. A. Jones for Leave to Intervene. Filed Dec. 20, 1913, at — M. George W. Lewis, Clerk. By Frank E. McCrary, Deputy. Law Offices, Stone-
man & Ling, 405, 406 and 407 Goodrich Block, Phoenix, Arizona. [26]

*In the United States District Court for the District
of Arizona.*

MERCHANTS & INSURERS' REPORTING
COMPANY,

Complainant,

vs.

BANKERS' FIRE INSURANCE COMPANY,
Defendant.

**Opposition to Amended Petition of F. A. Jones for
Leave to Intervene.**

I.

Comes now H. C. Norris, R. R. Hutchins, E. C. Ebert, R. E. Carter, W. S. Allen, John Otto, Chas. Winsel and Hugo Schroeder, and respectfully represent to the Court in the above-entitled cause that they are the parties named by F. A. Jones on his Amended Petition for intervention in the above-entitled action; that they have read the Amended Petition of said F. A. Jones, in which it is set forth that he represents them by written authority, and they deny that said Jones has such written authority, and they hereby revoke any authority ever given to said Jones to represent them in this action, or any other action.

II.

They further represent that said amended petition does not correctly set forth the facts in reference to the status of the Bankers' Fire Insurance Company in that it states that the present Board of Directors of the Merchants & Insurers' Reporting Company, the owners of the capital stock of the Bankers' Fire Insurance Company are not using their efforts to dissolve both of said companies; whereas [27] the true facts are that the said Board of Directors are proceeding with all possible dispatch to dissolve both of said companies; and that they are not wasting or dissipating the funds of either of said companies. That said Board of Directors have secured a rein-

insurance contract, whereby all insurance liabilities of the Bankers' Fire Insurance Company has been underwritten by a substantial company; that said Bankers' Fire Insurance Company has no further liability, and that their assets are in cash, notes and mortgages; and that the business of the Bankers' Fire Insurance Company may be closed and the assets transferred to the owners of the Merchants & Insurers' Reporting Company.

WHEREFORE, your petitioners pray that an order may be made, providing for the dissolution of the Bankers' Fire Insurance Company, and that the amended petition of said F. W. Jones may be dismissed.

F. C. STRUCKMEYER,
JOSEPH S. JENCKES,

Attorneys for Complainant and Petitioners. [28]

State of California,

County of Los Angeles,—ss.

The undersigned, each for himself, and not one for the other, being by me first duly sworn, deposes and says: That they are the parties named by F. A. Jones in his amended petition for intervention in the above-entitled matter; that they have read the foregoing opposition to amended petition of F. A. Jones for leave to intervene, and know the contents thereof; that the same is true of their own knowledge, except as to the matters which are therein stated upon their

information or belief, and as to those matters they believe it to be true.

H. C. NORRIS.

CHAS. WINSEL.

R. R. HUTCHASON.

W. S. ALLEN.

HUGO SCHROEDER.

E. C. EBERT.

R. E. CARTER.

Subscribed and sworn to before me this 24th day of December, 1913.

[Seal]

F. W. FELLOWS,

Notary Public in and for the County of Los Angeles
State of California. [29]

[Endorsements]: No. E.—15. Dept. ——. In the U. S. District Court for the State of Arizona. Merchants & Insurers' Reporting Co., Complainant, vs Bankers' Fire Ins. Co., Deft. Petition in Opposition to Intervention of F. A. Jones. Received copy of the within Petition this 10th day of January, 1914. Stoneman & Ling, Attorneys for Intervenors. Filed Jan. 10, 1914, at ——. M. George W. Lewis, Clerk. By Frank E. McCrary, Deputy. [30]

*In the United States District Court for the District
of Arizona.*

MERCHANTS & INSURERS' REPORTING
COMPANY,

Complainant,

vs.

BANKERS' FIRE INSURANCE COMPANY,
Defendant.

**Opposition to Amended Petition of F. A. Jones for
Leave to Intervene.**

I.

Comes now H. C. Norris, R. R. Hutchins, E. C. Ebert, R. E. Carter, W. S. Allen, John Otto, Chas. Winsel and Hugo Schroeder, and respectfully represent to the Court in the above-entitled cause, that they are the parties named by F. A. Jones in his Amended Petition for intervention in the above-entitled action; that they have read the Amended Petition of said F. A. Jones, in which it is set forth that he represents them by written authority, and they hereby revoke any authority ever given to said Jones to represent them in this action, or any other action.

II.

They further represent that said amended petition does not correctly set forth the facts in reference to the status of the Bankers' Fire Insurance Co., in that it states that the present Board of Directors of the Merchants & Insurers' Reporting Company, the owners of the capital stock of the Bankers' Fire Insurance Co. are not using their best efforts to dissolve both of said companies; whereas the true facts are that the said Board of Directors are proceeding with all possible dispatch to dissolve both of said companies; and that they are not wasting or dissipating the funds of either of said companies. That said Board of Directors have secured a reinsurance contract, whereby all insurance liabilities of the Bankers' Fire Insurance Co. has been underwritten by a substantial [31] company; that said Bank-

ers' Fire Insurance Co. has no further liability, and that their assets are in cash, notes and mortgage and that the business of the Bankers' Fire Insurance Co. may be closed and the assets transferred to the owners of the Merchants & Insurers' Reporting Company.

WHEREFORE, your petitioners pray that an order may be made, providing for the dissolution of the Bankers' Fire Insurance Company, and that the amended petition of said F. A. Jones may be dismissed.

(Signed) F. C. STRUCKMEYER,

(Signed) JOS. S. JENCKES,

Attys. for Complainant and Petitioners.

State of California,

County of Los Angeles,—ss.

John Otto, being by me first duly sworn, depose and says: That he is one of the parties who make the opposition in the above-entitled action; that he has heard read the foregoing Opposition to Amended Petition of F. A. Jones, and knows the content thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes to be true.

(Signed) JOHN OTTO.

Subscribed and sworn to before me this 3d day of January, 1914.

[Notarial Seal]

(Signed) F. W. FELLOWS,

Notary Public in and for the County of Los Angeles

State of California. [32]

[Endorsements]: No. E.—15. Dept. ——. In the U. S. District Court for the State of Arizona. Merchants & Insurers' Reporting Company, Plaintiff, vs. Bankers' Fire Insurance Co., Defendant. Petition in Opposition to Intervention of F. A. Jones. Received copy of the within Petition this 10th day of January, 1914. Stoneman & Ling, Attorneys for Intervenor. Filed Jan. 10, 1914, at — M. George W. Lewis, Clerk. By Frank E. McCrary, Deputy. [33]

*In the United States District Court for the District
of Arizona.*

MERCHANTS & INSURERS' REPORTING
COMPANY,

Complainant,

vs.

BANKERS' FIRE INSURANCE CO.,

Defendant.

**Affidavit of Certain Stockholders of the Merchants
& Insurers' Reporting Company.**

State of California,
County of Los Angeles,—ss.

H. C. Norris, R. R. Hutchins, E. C. Ebert, R. E. Carter, W. S. Allen, John Otto, Chas. Winsel and Hugo Schroeder, being first duly sworn depose and say:

That they are stockholders in the Merchants & Insurers' Reporting Company, a corporation of the State of California, and that they own the re-

34 *Merchants & Insurers' Reporting Co. et al.*

spective number of shares set opposite their names as follows:

H. C. Norris, One hundred (100) shares.

R. R. Hutchins, Fifty (50) shares.

E. C. Ebert, Twenty-five (25) shares.

R. E. Carter, Twenty-five (25) shares.

W. S. Allen, One hundred (100) shares.

John Otto, Five (5) shares.

Chas. Winsel, Fifty (50) shares.

Hugo Schroeder, Two hundred (200) shares.

That they have revoked, and do hereby revoke any authority given by them to one F. A. Jones to represent them in the United States District Court for the District of Arizona, in the case of the Merchants & Insurers' Reporting [34] Company and said revocation of authority has been duly mailed to said F. A. Jones, at Phoenix, Arizona.

JOHN OTTO.

Subscribed and sworn to by John Otto before me this 3d day of January, A. D. 1914.

[Seal]

F. W. FELLOWS,

Notary Public in and for the County of Los Angeles
State of California.

My commission expires Jan. 18, 1917. [35]

[Endorsements]: No. E.-15. District Court of the United States, for the District of Arizona. Merchants & Insurers' Reporting Co., Complainant, vs. Bankers' Fire Insurance Co., Defendant. Affidavit. Copy Received Jany. 9, 1914. Stoneman & Ling, Attys. for Intervenors. Filed Jan. 10, 1914, at — M. George W. Lewis, Clerk. By Frank E.

McCrary, Deputy. Struckmeyer & Jenckes, 145 Goodrich Bldg., Phoenix, Arizona, Attys. for Complainant. [36]

[Minutes of Court—March 17, 1914—Order Setting Cause for Argument on April 7, 1914, etc.]

In the United States District Court for the District of Arizona.

MINUTE ENTRY APPEARING UNDER DATE
OF MARCH 17th, 1914.

No. E.—15.

MERCHANTS AND INSURERS' REPORTING
CO.,

Plaintiff,

vs.

BANKERS' FIRE INSURANCE CO.,

Defendant.

IT IS ORDERED that this case be set down for argument on April 7, 1914, at ten o'clock, A. M., and

IT IS ORDERED that the Clerk notify Messrs. Stoneman and Ling, Esquires, and Messrs. Struckmeyer & Jenckes, Esquires, of the date set for argument. [37]

**[Minutes of Court—April 6, 1914—Order Resetting
Cause for Hearing on April 8, 1914.]**

*In the United States District Court for the District
of Arizona.*

MINUTE ENTRY APPEARING UNDER DATE
OF APRIL 6th, 1914.

No. E.—15.

MERCHANTS & INSURERS' REPORTING CO.
Plaintiff,

vs.

BANKERS' FIRE INSURANCE CO.,
Defendant.

IT IS ORDERED that this case be set for hearing
on April 8, 1914, at two o'clock P. M. [38]

**[Minutes of Court—April 8, 1914—Order Granting
Leave to File Petition for Intervention, etc.]**

*In the United States District Court for the District
of Arizona.*

MINUTE ENTRY APPEARING UNDER DATE
OF APRIL 8th, 1914.

No. E.—15.

MERCHANTS & INSURERS' REPORTING CO.
Plaintiff,

vs.

BANKERS' FIRE INSURANCE CO.,
Defendant.

On this day came the plaintiff, by Messrs. Struckmeyer and Jenckes, its attorneys, and the defendant, by Messrs. W. M. Seabury and James Westervelt, its attorneys, and the intervenors, by Reese Ling, Esquire; and the demurrer of the defendant to the petition for intervention was argued by counsel and submitted to the Court for its decision and the said demurrer was overruled by the Court and the petitioners were permitted to file their petition for intervention herein;

AND IT IS ORDERED that the petitioners be permitted to file their petition for intervention herein;

AND IT IS FURTHER ORDERED that the intervenors be permitted to file affidavits within five days of this date in support of their application for a receiver herein and that the plaintiff and defendant herein be given five days thereafter within which to file their affidavits in opposition to the appointment of a receiver herein, and that the intervenors shall then have two days additional time within which to file their reply affidavits herein, to all of which orders of the Court the plaintiff and defendant, by counsel, excepted and asked that their exception be noted upon the records and the same is accordingly done. [39]

*In the United States District Court for the District
of Arizona.*

MERCHANTS & INSURERS' REPORTING
COMPANY,

Complainant,

vs.

BANKERS' FIRE INSURANCE COMPANY,
Defendant.

Demurrer.

Comes now the defendant, Bankers' Fire Insurance Company, and in opposition to the motion and amended petition filed herein on or about December 20, 1913, by F. A. Jones, for himself and in the alleged behalf of other persons therein mentioned, for leave to intervene in the above-entitled cause, the defendant above named:

I.

Demurs to the said proposed petition upon the ground that it fails to state facts sufficient to constitute a cause of equitable cognizance in this court and cause and also upon the ground that it fails to state facts sufficient to constitute cause for intervention herein by the said F. A. Jones or any of the other persons therein named.

II.

And defendant particularly demurs to said petition upon the ground, among others, that a minority stockholder of the plaintiff has no cause of action against anyone for the alleged extravagance and waste of the directors of the defendant company, a

set forth in said amended intervening petition, for the reason that said cause of action, even if the facts stated were true, would be and is vested in the plaintiff company against the individual directors of the defendant. [40]

III.

Upon the further ground that the proposed intervenors are not necessary or proper parties to the above-entitled cause but are unnecessary and improper parties thereto.

IV.

Upon the further ground that the proposed intervenors have wholly failed to make any allegations in compliance with Equity Rule 27.

V.

Upon the further ground that if admitted to the above-entitled cause as intervenors therein, the only function which the said proposed intervenors seek to perform, is to move for the appointment of a receiver of the defendant company.

And should the foregoing demurrers and each of them be overruled, without waiving defendant's exceptions thereto, and reserving each and all of the foregoing objections and exceptions to the matters aforesaid, defendant denies that the said proposed intervenor, F. A. Jones, is authorized to represent any of the persons named in the said proposed amended petition in intervention filed herein on or about December 20, 1913, and in this connection defendant alleges that each of the persons named in said proposed amended petition in intervention, except the said F. A. Jones, has revoked any authority

previously existing in the said Jones to represent them or any of them, and that the said F. A. Jones is not now, as defendant is informed and believes, authorized to represent any of the persons named in said proposed amended intervening petition.

On information and belief, defendant alleges that the application of the said F. A. Jones for leave to intervene herein is not made in good faith, but in reality is simply an [41] effort upon the part of the said F. A. Jones to prevent the expeditious and economical dissolution of the defendant company by applying for the appointment of a receiver of said company and in support of said allegation the defendant asks leave to call one or more witnesses upon the hearing of the application of the said F. A. Jones for leave to intervene herein in opposition to said application.

WHEREFORE, defendant respectfully prays that the application of the said F. A. Jones and the other persons named in the proposed intervening amended petition filed herein on or about December 20, 1913, be denied.

RICHARD E. SLOAN,
W. M. SEABURY,
JAMES WESTERVELT,
Solicitors for Defendant.

[Endorsements]: In the United States District Court for the District of Arizona. *Merchants & Insurers' Reporting Company vs. Bankers' Fire Insurance Co.* Demurrer. Filed April 8, 1914. George W. Lewis, Clerk. Sloan & Westervelt, Fleming Building, Phoenix, Arizona. [42]

*In the United States District Court for the District
of Arizona.*

MERCHANTS & INSURERS' REPORTING
COMPANY,

Complainant,

vs.

BANKERS' FIRE INSURANCE COMPANY,
Defendant.

Petition of F. A. Jones in Intervention.

Leave of the Court having on the 8th day of April, 1914, been duly granted, comes now F. A. Jones for himself and all other stockholders similarly situated, by Mr. George J. Stoneman and Mr. Reese M. Ling, attorneys at law, at Phoenix, Arizona, makes and files this petition in intervention in the above-entitled action, and for grounds of said petition states:

I.

That all times mentioned in the bill of complaint filed herein he was and now is a stockholder of and in the Merchants & Insurers' Reporting Company, named as complainant in said bill, to the extent of 50 shares of stock, and that at all of said times there were a large number of other stockholders in said Company.

II.

That in addition to the shares of stock so by petitioner owned and held in said Company, he represents by written authority the following stockholders owning the following number of shares in said Company, to wit: [43]

42 *Merchants & Insurers' Reporting Co. et al.*

Name.	Address.	Share.
C. C. Thompson,	Pasadena, Calif.,	2
W. C. Humphreys,	Pasadena, Calif.,	1
August and Christian Stahlke,	Pasadena, Calif.,	2
E. C. Harris,	Pasadena, Calif.,	
May D. Bassett,	Pasadena, Calif.,	1
Chas. E. Holgate,	Los Angeles, Calif.,	
Dr. W. E. Hutchison,	Los Angeles, Calif.,	2
Dana Burks,	Los Angeles, Calif.,	2
L. Lindsay,	Los Angeles, Calif.,	
L. A. Phillips,	Los Angeles, Calif.,	
Frank G. Story,	Los Angeles, Calif.,	1
Mary Gantzer,	Pasadena, Calif.,	
Frank A. Zimmerman,	Los Angeles, Calif.,	
Chas. M. Parker,	Pasadena, Calif.,	
C. W. Harper,	Los Angeles, Calif.,	

III.

That it appears that on the 25th day of October 1913, the complainant herein filed its bill of equity in this Court against the defendant herein, alleging among other things, that the complainant was and is a corporation organized and existing under the laws of the State of California, and that the defendant was and is a corporation organized under the laws of the State of Arizona; and that said complainant is the owner of all of the capital stock of the defendant and that said complainant is the owner of all of the assets of the defendant; and that said complainant is the equitable owner of certain negotiable instruments and assets in the name of said defendant and that the said complainant will be serious

jeopardized unless the defendant is forthwith enjoined from carrying on any further business, and the assets of said defendant be rightfully distributed; and that said bill in equity prays that the defendant be dissolved under the directions of this Court, to which bill the defendant has made answer, admitting all of the allegations thereof and joined with the complainant in praying that the Court grant the relief sought. [44]

IV.

That since on or about the month of February, 1913, the defendant company has not been engaged in the conduct of any business except the collection of certain outstanding notes and that large amounts of money have been expended by the officers of said defendant in salaries of the officers and traveling expenses; that ever since said month of February, 1913, the officers of said defendant have been drawing large sums of money from the treasury of said company for alleged services and have paid out large sums of money to attorneys as attorneys' fees, and that said officers of said company have expended large sums of money for alleged traveling expenses; all of which said allowances and amounts have been expended from the funds of defendant company and to the great loss of the stockholders of said company. That at a stockholders' meeting of said complainant, a majority of the stockholders or over two-thirds of the issued stock of the complainant was represented and at said time it was agreed by said stockholders and the officers-elect that a dissolution of the defendant should immediately take place, and that the

officers elected at said time pledged themselves and agreed with the stockholders that a dissolution of said defendant should be speedily obtained and that the assets of said company should be distributed to those entitled by law to receive the same; that since said time the officers of said defendant company have wasted the assets of said company, and have grossly mismanaged the affairs of said company to a large extent and have wholly failed to take any steps toward a dissolution of said defendant before the institution of this action, and on or about the 15th day of September, 1913, various stockholders of the complainant herein filed a petition with the Arizona Corporation Commission, at the city [45] of Phoenix, setting forth certain facts and praying that said Corporation Commission take such steps and make such order or orders as would prevent the carrying on of any further business of the defendant and would take such other steps as would be beneficial to your petitioners herein, and to the complainant and the defendant; and that the reason for the filing of said petition was to secure the aid and assistance of the Arizona Corporation Commission in taking such steps as would cause the dissolution of the defendant, and the carrying out of the agreement and understanding entered into by and between the officers of the defendant and its stockholders and prevent any further dissipation of the funds of said defendant; which said petition is hereto attached and made a part hereof and prayed to be read in connection with this petition.

V.

That notwithstanding the fact that the officers elected at said stockholders' meeting held in the month of July, 1913, as aforesaid, agreed to and with the stockholders that immediate steps would be taken by them to secure the dissolution of the defendant herein, and the winding up of its affairs in an orderly and proper manner, no action was taken by said officers until the institution of this action, when for the purpose of carrying out a plan and scheme for further dissipating and expending the resources of the defendant and thus depriving your petitioners and all of the other stockholders of the complainant and the owners of the assets of the defendant, the bill in equity herein was filed, and in said bill certain officers of said company, and the ones who have been instrumental and engaged in the dissipation of the funds and assets of the defendant are asked to be by this Honorable Court constituted trustees for the purpose only of a dissolution of said defendant and the winding up of its said affairs. [46]

WHEREFORE, your petitioners pray that inasmuch as it appears from the record in this cause that both complainant and defendant desire that an order of dissolution be made dissolving the defendant and providing for the distribution of its assets to those lawfully entitled thereto; that they may be joined as defendants in this action; that a receiver be appointed by this Honorable Court under the rules thereof, who shall be empowered to speedily and without great expense, directed to prop-

erly administer the affairs of the defendant to the end that its assets shall not be further dissipated, and the same be distributed to those lawfully entitled thereto, and your petitioner will ever pray.

GEORGE J. STONEMAN,

REESE M. LING,

Solicitors for Petitioners. [47]

United States of America,

State of Arizona,

County of Maricopa.

F. A. Jones, being by me first duly *sown*, upon his oath deposes and says: That he has read the foregoing petition in intervention and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters stated therein upon information and belief, and as to those matters he believes it to be true.

F. A. JONES.

Subscribed and sworn to before me this 9th day of April, 1914.

[Notarial Seal]

M. C. WEAVER,

Notary Public. [48]

To the Corporation Commission, Phoenix, Ariz.:

In Re Bankers' Fire Insurance Company.

Gentlemen:—

WE, THE UNDERSIGNED, stockholders of the Merchants and Insurers' Reporting Company, respectfully submit this, our petition, and beg that your commission will see fit to grant the relief prayed for.

We beg to submit the following facts:

1. That the stock of the Bankers' Fire Insur-

ance Company is, with the exception of four (4) shares, all owned by the Merchants and Insurers' Reporting Company; that the stock of the Bankers' Fire Insurance Company was purchased by the Merchants and Insurers' Reporting Company by putting up One Hundred Ninety-five Thousand (\$195,000.00) Dollars in notes and Five Thousand (\$5,000.00) Dollars in cash; the notes having been given by the stockholders of the Merchants and Insurers' Reporting Company for stock in that corporation; that none of said notes have been collected.

2. That since about February, 1913, the Bankers' Fire Insurance Company has been doing no business whatever, except to attempt to collect the above-mentioned notes; that large amounts of money have been spent by the officers of that corporation, according to a report of their financial condition to the real owner of the company,—the Merchants and Insurers' Reporting Company; that the officers of the Bankers' Fire Insurance Company are: Leroy H. Civile, President, H. A. Davis, Secretary and Treasurer, and C. S. Feldman, Vice-president; that only one share of stock is held by each officer to qualify them to act as a director.

3. That according to the financial condition of the company [49] on June 30, 1913, the Bankers' Fire Insurance Company owned the following property:

48 *Merchants & Insurers' Reporting Co. et al.*

Mortgages.....	\$ 5,250.00
Real Estate.....	700.00
Furniture and Fixtures.....	800.00
Cash, approximately.....	11,500.00
Stockholders' Notes.....	191,900.00

Total.....\$210,150.00

4. That on June 24, 1913, H. A. Davis and Leroy H. Civile drew for alleged services, each, One Hundred Sixty-six and 67/100 (\$166.67) Dollars; that said officers also drew Two Hundred Fifty (\$250.00) Dollars each for alleged services; that on May 21, 1913, said officers paid Sloan, Seabury and Westervelt, Two Hundred Fifty (\$250.00) Dollars; that on June 30, 1913, said officers paid the same persons for alleged attorneys' fees Two Hundred Fifty (\$250.00) Dollars; that on May 21, 1913, said officers claimed to have expended Three Hundred Ninety-eight and 23/100 (\$398.35) Dollars for traveling expenses and for hotel bills; that H. A. Davis has put in bills which have been allowed for at least One Hundred Fifty (\$150.00) Dollars for trips from Phoenix, Arizona, to Los Angeles, Cal., and that said Civile and Davis have put in further claims for Four Hundred Twenty-five (\$425.00) Dollars traveling expenses, all of which have been paid; that there is in the hands of the Board of Directors of the Merchants and Insurers' Reporting Company at Los Angeles, Cal., an itemized statement which contains a great many other items of expense which your petitioners cannot enumerate, but which appear on the books of the Bankers' Fire Insurance Company.

5. That the total amount of surplus on June 30, 1913, amounted to Ten Thousand One Hundred Fifty (\$10,150.00) Dollars, and that as against this the company was the insurer of over a million dollars worth of property; that said company, although not doing any business, has never had said insurance policies rewritten, and that should there be any material fire losses in the near future, not only will the surplus which is being used [50] by the said officers aforesaid, be eaten up, but the Merchants and Insurers' Reporting Company, and eventually the stockholders, your petitioners, be forced to pay large amounts out of their pockets to cover said losses.

6. That owing to the peculiar condition of the by-laws and the law in Arizona relating to corporations, the Merchants and Insurers' Reporting Company have found it impossible to remove the board of directors of the said Bankers' Fire Insurance Company, and that while all the stock, with the exception of said four (4) shares is owned by the Merchants and Insurers' Reporting Company, and the said Board of Directors of the Merchants and Insurers' Reporting Company are under the control of the stockholders of that company and may be removed on a vote of $\frac{2}{3}$ of the stock of said Merchants and Insurers' Reporting Company, yet the said directors of the Bankers' Fire Insurance Company are taking steps and doing acts which are entirely against the wishes of the real owners of that company, and unless restrained will cause great and irreparable loss to the undersigned.

7. *That the* annual stockholders' meeting in July, 1913, over $\frac{2}{3}$ of the stock of the Merchants and

Insurers' Reporting Company was represented and the stockholders voted to elect officers who would pledge themselves to cause a dissolution of the said Bankers' Fire Insurance Company; that said Leroy H. Civile and H. A. Davis were present and acquiesced in said agreement to dissolve the said Bankers' Fire Insurance Company; that the subsequent action of those officers has convinced the undersigned that such action was not contemplated, and that it is the intention of said officers to undertake to launch a fire insurance company under the laws of the State of Arizona, with what assets the Bankers' Fire Insurance Company has at present, and to apply to your Honorable Board for a license to transact such business, and we respectfully [51] submit that the attempted collection of the \$191,900.00 in notes held by the company and which were signed by the stockholders of the Merchants and Insurers' Reporting Company, will result in numerous and costly lawsuits, as there is no intention on the part of a great many of the makers of said notes to pay the same unless forced to do so, if that can be done, in the courts of law; that the wishes of a majority of the stockholders of the Merchants and Insurers' Reporting Company is that the Bankers' Fire Insurance Company be dissolved at the earliest possible moment, and that the constant drawing on the resources of the company be stopped; and your petitioners cite the following instance to show of the tremendous loss and trouble which may be occasioned to your petitioners, to wit: J. E. Youtz in 1908 executed eleven of the promissory notes, which have

been until recently, held by the Bankers' Fire Insurance Company; that as security for said notes, which were issued for stock of the Merchants and Insurers' Reporting Company; that said J. E. Youtz put up as collateral security the certificates of stock issued therefor; that after the annual stockholders' meeting of the Merchants and Insurers' Reporting Company in July, 1913, the officers of the Bankers' Fire Insurance Company were instructed and agreed not to dispose of any of the notes of the stockholders of the Merchants and Insurers' Reporting Company; that notwithstanding this the said officers Leroy H. Civile and H. A. Davis proceeded to hire attorneys in the City of Los Angeles and assigned all of said notes executed by J. E. Youtz to one Williams, an employee in the offices of the attorneys aforesaid; that said Williams proceeded to sell the certificates of stock of the said J. E. Youtz at a pretended sale, and sold the same for the sum of \$10.50; that the said Williams thereupon proceeded to bring an action in the Superior Court of the County of Los Angeles, State of California, for the sum of \$11,000.00, alleging that even the [52] \$10.50 had been used up for the expenses of the pretended sale; that unless some action is taken, the said Board of Directors of the Bankers' Fire Insurance Company will undoubtedly proceed with the same action in regards to the notes held by your petitioners; that the above example was repeated in the case of another stockholder, one J. C. Belton; that with the lawsuits now pending and impending your petitioners feel that not only are the board of directors of the Bankers' Fire

Insurance Company violating the trust and confidence reposed in them by your petitioners, but that unless your Honorable Board takes some action to restrain and enjoin the Bankers' Fire Insurance Company from *transaction* any business whatsoever in the future, that the corporation will suffer great and irreparable loss.

WHEREFORE, your petitioners pray that your Honorable Board issue such order as may be deemed meet in the premises, and especially to restrain the board of directors of the Bankers' Fire Insurance Company from carrying on any further business until such time as your Honorable Board may have had full opportunity to investigate the matter of your petitioners' claim, and to hear the fact in connection therewith; that said Bankers' Fire Insurance Company be ordered to protect the outstanding policies of insurance issued, by having them immediately re-written in some responsible fire insurance company.

Dated Los Angeles, Cal., September 15, 1913.

J. E. YOUTZ.

P. A. PARKER.

WM. H. H. GOODWIN.

C. E. HOLGATE.

G. U. WHITNEY.

SWANFELDT TENT & AWNING CO.,

ADAM SWANFELDT,

Pres.

MATHEWS CANDY CO.,

A. S. MATHEWS.

E. W. WOOLSEY.

HUGO SCHROEDER,

F. A. JONES. [53]

*In the United States District Court for the District
of Arizona.*

MERCHANTS & INSURERS' REPORTING
COMPANY,

Complainant,

vs.

BANKERS' FIRE INSURANCE COMPANY,
Defendant.

F. A. JONES,

Intervenor.

State of California,
County of Los Angeles,—ss.

**Affidavit [of P. A. Parker] on Behalf of Intervenor
in Support of His Petition for a Receiver for
Defendant Corporation.**

P. A. Parker, being duly sworn, says that the complainant corporation was incorporated in the fore part of the year 1906, under the laws of the State of California, with a capital stock of \$500,000.00, divided into 50,000 shares of a part value of \$10.00 each. That at or about the time of its incorporation, of said stock there was sold an amount thereof, for cash, to various and divers persons and individuals, in excess of \$100,000.00, that there was also a large amount of said stock sold to various and divers persons and individuals for which they did not pay cash, but gave their promissory five year notes therefor, which would mature, and which did mature, on the first day of July, 1913; said promissory notes totaled to the amount of approximately \$250,000.00, and in

each individual case where the stock was issued to the purchaser thereof, the same was not delivered to him, but was attached to said promissory note as collateral security therefor.

That thereafter, on the third day of December, 1909, the [54] defendant, to wit, Bankers' Fire Insurance Company, was incorporated under the laws of the then Territory of Arizona, with a capital stock of \$200,000.00, divided into 2,000 shares of a par value of \$100.00 each; that almost immediately thereafter, the said complainant became the owner of all of the stock of the said defendant corporation, to wit, said 2,000 shares of stock, with the exception of three shares thereof which were held by other persons to complete the Board of Directors of said defendant corporation. That in payment therefor the said complainant paid the sum of \$5,000.00 in cash, and turned over to said defendant corporation of said promissory notes \$195,000.00 thereof, which said notes thereupon became an asset of the defendant corporation.

That the said defendant corporation, prior to the month of February, 1913, did a large insurance business and issued policies of insurance to the stockholders of the complainant corporation, and to others in excess of the sum of \$600,000.00.

That the only object and purpose of incorporation of complainant was to become a Holding Company of Insurance Companies, and that the purpose of the incorporation of the defendant, was to engage in the fire insurance business.

That about two years prior to the first day of July,

1913, one Robert Mitchell, an attorney at law of the city of Los Angeles, California, began an attack against the integrity and honor of both the complainant corporation, and the defendant corporation, and persistently, during said period of two years, kept up said attack; that he wrote scurrilous articles concerning both of said corporations in which he repeatedly referred to said corporations as fake corporations, and fraudulent corporations, and that said Mitchell, in connection with other persons, succeeded in sowing such discord among the stockholders of complainant corporation that at the annual meeting of the stockholders of complainant corporation held in the city of Los Angeles, California, in the month of July, [55] 1913, a new Board of Directors were elected, who were at said meeting pledged to take immediate steps to bring about the dissolution of the defendant corporation, as well as the Phoenix Fire Underwriters, another Insurance Company incorporated under the laws of Arizona on the said third day of December, 1909, with a capital of \$100,000.00, and of which said last corporation, the complainant herein soon after its incorporation, became the owner of all the stock thereof, with the exception of three shares which were held by other persons to fill the Board of Directors thereof; that notwithstanding the pledge upon which said new Board of Directors was elected, no steps whatsoever were taken to bring about the dissolution of the said two corporations other than in the manner as appears of record herein; that no steps have ever been taken by the officers of the said Bankers' Fire Insurance Company, nor the

Phoenix Fire Underwriters, at the instigation or solicitation of complainant to liquidate the affairs of the said two corporations by collecting in its assets, or otherwise; that no attempt has been made by the officers of the defendant corporation to enforce payment of any of the promissory notes given as hereinabove stated, and turned over to the defendant corporation in payment for its stock as hereinbefore stated, notwithstanding the fact that *that* said notes matured on the first day of July, 1913. That four of the Board of Directors of the complainant corporation, to wit, John Casteria, who is president of said corporation, Marshall Stimson, H. Y. Stanley and F. W. Boynton, all stockholders of said corporation, gave their promissory notes for their stock, and have never paid any cash therefor, nor have they ever paid their said promissory notes, or any part thereof.

That on the twenty-first day of October, 1913, the President of complainant corporation, to wit, John Casteria, and the President of the Bankers' Fire Insurance Company, to wit, Leroy H. Civile, and the said Phoenix Fire Underwriters, by its President, Leroy H. Civile, [56] made and entered into a contract with the Fireman's Fund Insurance Company whereby all of the insurance business held by the said two Arizona corporations, to wit, Bankers' Fire Insurance Company and the Phoenix Fire Underwriters, was rewritten with and taken over by the said Fireman's Fund Insurance Company at a great expense and loss to the said Arizona corporations, a copy of which said agreement is attached hereto, marked Exhibit "A," and made a part of this

affidavit. That said agreement was entered into notwithstanding the fact that the Arizona Corporation Commission had made its order relating to the affairs of the defendant Bankers' Fire Insurance Company, a copy of which said order is attached hereto, marked Exhibit "B," and made a part of this affidavit, and that a similar order, at the same time, was made by said corporation commission concerning the affairs of the Phoenix Fire Underwriters. That the said Phoenix Fire Underwriters and the said defendant, the Bankers' Fire Insurance Company, are not now and have not been, since the month of February, 1913, engaged in any business whatsoever; that they have no income from any source, and that notwithstanding large amounts of money have been expended by the officers of said defendant corporation, as well as the Phoenix Fire Underwriters, in salaries of the officers, and traveling expenses; that ever since the said month of February, 1913, the officers of said defendant corporation, have been drawing large sums of money from the treasury of said company for alleged services and have paid out large sums of money to attorneys for attorneys' fees, and that said officers of said company have expended large sums of money for alleged traveling expenses, all of which said allowance and amounts have been expended from the funds of defendant company, and the Phoenix Fire Underwriters, to the great loss of the stockholders of complainant corporation; that stockholders of complainant corporation, although demand therefor has been made, have been refused access to the books of the defendant corporation, as well as [57] the

Phoenix Fire Underwriters, notwithstanding the fact that the complainant corporation is the owner of all of the stock of said two insurance corporations; that affiant is informed, and upon such information believes, that all of the directors of both the defendant corporation and the said Phoenix Fire Underwriters, each of which is composed of three directors, have resigned, with the exception of Leroy H. Civile, and that the said Leroy H. Civile is the sole and remaining director, or other officer, of either of said two insurance companies; that the said Leroy H. Civile is absolutely under the dominion and control and direction of the Board of Directors of complainant corporation; that since the election of the Board of Directors at the annual stockholders' meeting in July, 1913, at which a Board of Directors was elected as hereinbefore stated, the law firm of Mitchell and Slosson, the hereinbefore said Robert Mitchell being a member of said firm together with said Marshall Stimson, have been the attorneys for the complainant corporation, the defendant corporation and the said Phoenix Fire Underwriters, and that the said Mitchell, notwithstanding his attack upon the said corporation as hereinbefore stated, is now directing as legal adviser, the affairs of said corporations.

That the defendant Bankers' Fire Insurance Company and the complainant corporation, by its officers and its said attorneys, are now engaged in maintaining costly and unnecessary suits in the courts of California and that the assets of said corporation are being consumed in such litigation; that notwithstanding the fact that the defendant Bankers' Fire Insurance

Company and the Phoenix Fire Underwriters were incorporated under the laws of Arizona, with the principal place of business of both of said corporations at Phoenix, Arizona, neither of said corporations maintain an office in Arizona; that the said Leroy H. Civile, President of both of said Arizona corporations, is a citizen of Los Angeles, [58] California, and in conjunction with John Casteria, President of complainant corporation, is conducting and carrying on a general insurance and real estate business in the said city of Los Angeles, and affiant further says that the assets of both of said Arizona corporations, as well as all of the books and papers of both of said corporations, are in the city of Los Angeles, and without the State of Arizona.

Affiant modifies this affidavit to the following extent: That one suit at law was instituted shortly after the election of the new Board of Directors in July, 1913, upon a promissory note given by one J. E. Youtz, in payment of stock in complainant corporation to the value of \$11,000.00, and that as a preliminary to said suit, the stock of said J. E. Youtz in complainant corporation given as collateral security for said note was sold as a pledge without notice of sale, for the sum of one cent a share, notwithstanding the fact that said stock was worth \$10.00 a share, and that the said stock was bid in at the sale in the presence of said Leroy H. Civile, representing the defendant corporation; that the said stock was sold to a man named Wiser, and was not bid in for the benefit of defendant corporation.

(Signed) P. A. PARKER.

Subscribed and sworn to before me this 11h of April, 1914.

[Notarial Seal]

(Signed) AFUE McDOWELL,
Notary Public in and for the County of Los Angeles,
State of Cal.

My commission expires March 24, 1916. [59]

MEMORANDUM OF AGREEMENT

Made this 21st day of October, 1913.

FIRST: The Fireman's Fund Insurance Company agrees to reinsure all the outstanding fire liability of the Bankers' Fire Insurance Company and the Phoenix Fire Underwriters of Phoenix, Arizona, as of 12 o'clock, noon, this 21st day, of October, 1913, the liability assumed by the Fireman's Fund attaching only to the uncanceled and unexpired policies of said Companies mentioned in the attached list furnished by the representatives of said Companies.

SECOND: Any policies in said list which are written below the rates of the Board of Underwriters of the Pacific shall, for the purpose of computing the premium to become due the Fireman's Fund Insurance Company under this memorandum, be restored to full Board rates.

THIRD: In case it is found that any of the policies mentioned in the enclosed list were written for periods of three (3) years contrary to the rules of the Board of Underwriters, then in such case the premiums on such policies, for the purpose of computing the amount to become due the Fireman's Fund hereunder, shall be figured on the basis of three or five annual rates, as the case may be.

FOURTH: Should it develop that there are any taxes or licenses pending on said premiums against the re-insuring companies, it is understood that said re-insuring companies shall liquidate such taxes.

FIFTH: There shall be made up and completed by said re-insuring companies within Thirty (30) days of date hereof, triplicate schedules of the risks covering under the terms of this re-insurance memorandum. Said schedules shall contain the following headings and memoranda: [60]

Number of policy.

Name of assured.

Specific description of risk.

Kind of property.

County and State.

The beginning, term, expiration, amount and premium of the original policy.

Also the amount reinsured hereunder, the unexpired term of the re-insurance, the date of expiration, and the *pro rata* unearned premium on each policy, as per sample heading furnished the representatives of the re-insuring companies.

SIXTH: There shall be paid to the Fireman's Fund Insurance Company the *pro rata* premiums for the unexpired terms of said policies, computed as above indicated, less a commission of 25%, and as an evidence of good faith the representatives of the re-insuring companies have this date paid to the Fireman's Fund Insurance Company cashier's checks aggregating Thirty-six Hundred and Fifty Dollars (\$3650), receipt of which is hereby acknowledged by the Fireman's Fund.

SEVENTH: If upon the completion of the schedules, and the determination of the amount to become due the Fireman's Fund Insurance Company hereunder, which determination must be made within Thirty (30) days from date hereof, it shall be found that an additional sum is due said Fireman's Fund the said re-insuring companies guarantee to promptly pay said amount; and if it should be found that the amount of Thirty-six Hundred and Fifty Dollars (\$3650) already paid to the Fireman's Fund is more than the said Fireman's Fund is entitled to under said determination, then said Fireman's Fund will promptly repay the difference to said re-insurers.

EIGHTH: The said re-insuring companies hereby agree not to re-enter the insurance business for a period of at least Five (5) years from this date.

NINTH: In case any of the assured mentioned in the enclosed list should cancel their policies subsequent to the date [61] hereof, or if the re-insuring companies above mentioned should find it expedient to make any such cancellations, it is understood that the Fireman's Fund will repay said re-insuring companies the amount of return premium properly determined, less the re-insurance commission of 25% provided for herein.

TENTH: If this agreement and all matters required therein to be performed on the part of the re-insuring companies, are not so performed within 30 days of date hereof this agreement shall cease and determine, and the Fireman's Fund be released from further liability under its re-insurance covering, and said Fireman's Fund shall be entitled to *pro rata*

premium on each policy for the time this agreement has been in force, and the balance of the money received to be returned to said re-insuring companies.

ELEVENTH: The re-insuring companies agree to furnish the Fireman's Fund Insurance Company with all such original data, records, maps and papers relating to the risks embraced in the attached schedule, as may be in their power.

TWELFTH: The re-insuring companies above mentioned hereby agree not to furnish a memorandum of the expiration of the policies embraced within this agreement to any other parties except the Fireman's Fund Insurance Company or its representative.

FIREMAN'S FUND INSURANCE COMPANY,

By BERNARD FAYMONVILLE,

Vice-President.

BANKERS' FIRE INSURANCE COMPANY,

By LEROY H. CIVILLE,

President.

PHOENIX FIRE UNDERWRITERS,

By LEROY H. CIVILLE,

President.

I have read the foregoing, and as President of the Merchants and Insurers' Reporting Company, which is the holding company of the two re-insuring companies above mentioned, [62] and also individually on my own behalf, undertake and guarantee the performance in good faith on behalf of the re-

insuring companies above mentioned.

(Signed) JOHN CASTERA. [63]

Before the

ARIZONA CORPORATION COMMISSION.

Insurance Department Docket #1.

In re BANKERS' FIRE INSURANCE COM
PANY.

It appearing to this commission from a partial examination of the affairs of the Bankers' Fire Insurance Company that the interests of the stockholders policy-holders and others in interest would be better protected if the assets of said Company as of October 21, 1913, shall remain intact:

IT IS THEREFORE ORDERED that the Bankers' Fire Insurance Company be and the same is hereby ordered to cease and desist from further impairment of the assets of said Company, and shall hold intact all of said Company's moneys, securities and assets of whatsoever kind and character, and shall refrain from making or entering into any contract or agreements, and from doing any business, and from the payment of any salaries to its officers or any other persons, pending the completion of the examination of the affairs of said Company by this Commission.

Done at Phoenix, Arizona, this 24th day of October, 1913.

ARIZONA CORPORATION COMMISSION.

W. P. GEARY,
Chairman.

[Seal]

A. W. COLE,
Commissioner.

Attest: FRANK DE SOUSA,
Secretary.

[Endorsements]: In the United States District Court for the District of Arizona. Merchants & Insurers' Reporting Company, Complainant, vs. Bankers' Fire Insurance Company, Defendant, F. A. Jones, Intervenor. State of California, County of Los Angeles,—ss. Affidavit on Behalf of Intervener in Support of His Petition for a Receiver for Defendant Corporation. [64]

[Endorsements]: No. E.—15 (Phoenix). In the United States District Court for the District of Arizona. Merchants & Insurers' Reporting Co., Complainant, vs. Bankers' Fire Insurance Co., Defendant. Petition of F. A. Jones in Intervention. Recd. copy of within this 13th day of April, 1914. Struckmeyer & Jenckes, Attys. for Complainant. Copy received 4/13/14. Sloan, Seabury & Westervelt, Attys. for Defendant, by DeRiemer. Filed Apr. 13, 1914, at — M. Geo. W. Lewis, Clerk. By R. E. L. Webb, Deputy. Law offices: Stoneman & Ling, 405, 406 and 407 Goodrich Block, Phoenix, Arizona. [65]

*In the United States District Court for the District
of Arizona.*

MERCHANTS & INSURERS' REPORTING
COMPANY,

Complainant,

vs.

BANKERS' FIRE INSURANCE COMPANY,
Defendant.

**Affidavit of John Castera, F. W. Boynton, H. Y.
Stanley, W. A. Johnston and Marshall Stimson.**

State of California,
County of Los Angeles,—ss.

John Castera, F. W. Boynton, H. Y. Stanley, W.
A. Johnston and Marshall Stimson, being first duly
sworn, each for himself and not for the others,
deposes and says:

I.

That the Merchants and Insurers' Reporting Com-
pany, a corporation, the complainant in this action,
is a corporation organized under the laws of the
State of California; and, that its articles of incor-
poration provide for a board of five (5) directors;
that the above-named constitute the said Board of
Directors of said corporation.

II.

That the said Merchants and Insurers' Reporting
Company owns all of the capital stock of the said
Bankers' Fire Insurance Company, defendant, a
corporation of the State of Arizona, except three
(3) shares held by the directors of said Bankers'

Fire Insurance Company. That the said Board of Directors of the said Merchants and Insurers' Reporting Company unanimously passed a motion directing the directors of the Bankers' Fire Insurance Company to settle all the liabilities of the said Bankers' Fire Insurance Company; to turn over the assets of said Bankers' [66] Fire Insurance Company and to dissolve the said Bankers' Fire Insurance Company. That said instructions were communicated to the directors of the Bankers' Fire Insurance Company; and pursuant thereto they proceeded to pay or cancel all of the debts and liabilities of the said Bankers' Fire Insurance Company. That a stockholders' meeting of the Bankers' Fire Insurance Company was duly held thereafter, and that every share of stock of said corporation was duly represented at said meeting. The said stockholders representing the shares of stock in said corporation voted *and voted* and unanimously resolved to dissolve the said Bankers' Fire Insurance Company.

III.

That the above-named persons, as directors of the said Merchants and Insurers' Reporting Company, are ready to receive the assets in kind of the defendant, Bankers' Fire Insurance Company. That the said Bankers' Fire Insurance Company has now no debts or liabilities, and the assets of the same consist of notes, mortgages and bonds, largely covering property in the State of California. That the directors of the Merchants and Insurers' Reporting Company desire said assets to be turned over to the

said Merchants and Insurers' Reporting Company in kind, and without the delay and expense incidental to reducing the same to cash.

IV.

That no expense has been incurred by the said Bankers' Fire Insurance Company, beyond the necessary legal expenses, since October 1st, 1913; and that the said Board of Directors of the said Merchants and Insurers' Reporting Company desire to dissolve the said Bankers' Fire Insurance Company, without the delay and expense of a receiver being appointed therefor. [67]

JOHN CASTERA.

F. W. BOYNTON.

[Seal]

H. Y. STANLEY.

W. A. JOHNSTON.

MARSHALL STIMSON.

Subscribed and sworn to before me this 16th day of April, 1914.

F. W. FELLOWS,

Notary Public in and for Los Angeles County, State of California. [68]

[Endorsements]: E.—15. In the United States District Court, for the District of Arizona. Merchants & Insurers' Rep. Co. vs. Bankers' Fire Ins. Co. Affidavit. Filed Apr. 20, 1914. Geo. W. Lewis, Clerk. By R. E. L. Webb, Dep. F. C. Struckmeyer, Jos. S. Jenckes, Solicitors for Complainant. R. E. Sloan, W. M. Seabury, James Westervelt, Solicitors for Defendant, Phoenix, Arizona. Service of a copy of within affidavit this 18th day of April, 1914, is acknowledged. Reese M. Ling,

George J. Stoneman, M. C. W., Solicitors of Interveners. [69]

*In the United States District Court for the District
of Arizona.*

No. E.—15.

MERCHANTS & INSURERS' REPORTING
COMPANY,

Complainant,

vs.

BANKERS' FIRE INSURANCE COMPANY,

Defendant.

**Joint Answer of Plaintiff and Defendant to Petition
in Intervention of F. A. Jones, Verified April
9, 1914.**

Come now the plaintiff and defendant above named, jointly, and in answer to the petition in intervention of F. A. Jones, verified April 9, 1914:

1.

Demur to said petition upon the ground that the said petition in intervention fails to state facts showing that the petitioner Jones, or any other of the persons named in said petition for whom it is alleged that the said Jones had authority to appear in the above-entitled cause, has any interest in the subject of the litigation herein, and fails to state facts sufficient to constitute any cause or right of intervention in the above-entitled cause and fails to state facts sufficient to constitute any cause cognizable in equity herein, but that it appears on the face of said petition that neither the said F. A. Jones nor any of the

persons mentioned and described in paragraph 2 of said petition are necessary or proper parties to the above-entitled cause, but, on the contrary, the said Jones and each of the said persons is and are unnecessary and [70] improper parties thereto, and it further appears on the face of said petition that the intervenors have wholly failed to comply with Equity Rule 27.

And should the foregoing demurrer be overruled without waiving their exceptions thereto and reserving each and all of the foregoing objections and exceptions to the matters above stated, plaintiff and defendant:

2.

Admit that the said intervenor, F. A. Jones, was and now is a stockholder of and in the plaintiff above named to the extent of 50 shares of stock.

3.

Deny any knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph 2 of said petition in intervention, and therefore deny the same.

4.

Deny that ever since the month of February or at any other time the officers of the defendant have been drawing large sums of money from the treasury of said company for alleged services and have paid out large sums of money to attorneys as attorneys' fees and that said officers of said company have expended large sums of money for alleged traveling expenses, and deny that there has been any expenditure of said fund by the defendant to the great loss

of the stockholders either in said company or in the plaintiff company, and in this connection plaintiff and defendant allege that the only moneys expended by the defendant company since February, 1913, have been legitimate and proper expenditures [71] in the shape of necessary salaries, traveling expenses and other legitimate obligations of the defendant above named, and that each and all of the expenditures so made have been with the full knowledge, consent and approval of the plaintiff above named.

Deny that the officers of the defendant company have at any time since February, 1913, wasted the assets of the company, and deny that said officers have grossly mismanaged, or mismanaged at all, the affairs of the company to a large, or any, extent.

Admit that on or about September 15, 1913, various persons claiming to be stockholders in the plaintiff above named filed a petition with the Arizona Corporation Commission in the city of Phoenix, Arizona, copy of which purports to be annexed to the said petition in intervention herein, and for greater certainty refer thereto.

Deny each and every other allegation in paragraph IV of said petition in intervention not hereinbefore specifically admitted or denied.

5.

Deny each and every allegation contained in paragraph V of said petition in intervention, and plaintiff and defendant allege in this connection that the sole and only purpose for the institution and maintenance of this action was and is to procure the orderly and lawful dissolution of the defendant company,

and deny that the officers of the defendant company mentioned in the bill of complaint herein have been instrumental or engaged or have otherwise participated in the dissipation of any of the funds or assets [72] of the defendant company; and that prior to the institution of this action negotiations had been carried on by plaintiff and defendant which had resulted in the execution of a preliminary contract providing for the reinsurance in a strong and responsible company of all of defendant's outstanding insurance risks, and that all of defendant's other obligations of which it has any knowledge have been paid.

6.

Plaintiff and defendant allege on information and belief that the purpose of said petition in intervention, among other things, is to enable the said petitioner, F. A. Jones, to obtain control and management of the above-entitled cause, and that said intervention is not made in subordination to and in recognition of the propriety of the main proceeding herein, but is interposed solely for the purpose of securing the appointment of a receiver herein at great expense to the plaintiff and defendant above named, and for no useful or lawful purpose whatsoever.

WHEREFORE, plaintiff and defendant pray that the said intervening petition be dismissed with costs.

F. C. STRUCKMEYER,

JOS. S. JENCKES,

Attorneys for Complainant.

RICHARD E. SLOAN,

WM. M. SEABURY,

JAMES WESTERVELT,

Attorneys for Defendant. [73]

[Affidavit of John Castera.]

State of California,

County of Los Angeles,—ss.

John Castera, being duly sworn, deposes and says: That he is President of the Merchants and Insurers' Reporting Company, the complainant in the above-entitled cause; that he has read the foregoing answer to the petition in intervention, knows the contents thereof and that the same are true, including the denials therein contained, of his own knowledge, except to the matters therein stated upon information and belief, and that as to those matters he believes them to be true.

Deponent further says that the reason this verification is made by deponent and not by complainant is that complainant is a corporation and deponent is President thereof, and the sources of deponent's knowledge and the grounds of his belief are corporate records of the complainant in deponent's possession and transactions in which deponent has been concerned as President of complainant.

(Signed) JOHN CASTERA.

Subscribed and sworn to before me this 2st day of April, 1914.

[Seal]

(Signed) JOS. FILHOL,
Notary Public.

My commission expires Nov. 17th, 1917. [74]

[Affidavit of Leroy H. Civile.]

State of California,
County of Los Angeles,—ss.

Leroy H. Civile, being duly sworn, deposes and says: That he is President of the Bankers' Fire Insurance Company, the defendant in the above-entitled cause; that he has read the foregoing answer to the petition in intervention, knows the contents thereof and that the same are true, including the denials therein contained, of his own knowledge, except as to the matters therein stated upon information and belief, and that as to those matters he believes them to be true.

Deponent further says that the reason this verification is made by deponent and not by defendant is that defendant is a corporation and deponent is the President thereof, and the sources of deponent's knowledge and the grounds of his belief are corporate records of the defendant in deponent's possession and transactions in which deponent has been concerned as such President of defendant.

LEROY H. CIVILLE.

Subscribed and sworn to before me this 21st day of April, 1914.

[Seal]

JOS. FILHOL,
Notary Public.

My commission expires November 17th, 1917.
[75]

[Endorsements]: Service of a copy of within joint answer is acknowledged this 25th day of April, 1914.

GEORGE J. STONEMAN,

REESE M. LING,

Solicitors for Intervenor.

In the United States District Court for the District of Arizona. Merchants & Insurers' Reporting Company vs. Bankers' Fire Insurance Co. Joint Answer of Complainant and Defendant. Filed April 25, 1914. George W. Lewis, Clerk. F. C. Struckmeyer, Jos. S. Jenckes, Solicitors for Complainant. R. E. Sloan, W. M. Seabury, James Westervelt, Solicitors for Defendant. [76]

[Minutes of Court—April 25, 1914—Order
Overruling Demurrer, etc.]

*In the United States District Court for the District
of Arizona.*

MINUTE ENTRY APPEARING UNDER DATE
OF APRIL 25th, 1914.

No. E.—15.

MERCHANTS & INSURERS' REPORTING CO.,
Plaintiff,

vs.

BANKERS' FIRE INSURANCE CO.,
Defendant.

The demurrers heretofore filed herein are hereby overruled and the cause is submitted to the Court for

its decision and judgment upon the pleadings, petitions and affidavits of the parties hereto and the intervenors herein. [77]

*In the United States District Court for the District
of Arizona.*

No. E.—15.

MERCHANTS & INSURERS' REPORTING
COMPANY,

Complainant,

vs.

BANKERS' FIRE INSURANCE COMPANY,
Defendant,

Order Appointing Receiver.

This cause coming on to be heard on the 1st day of July, 1914, the same being a day of the regular April term of this court, upon the verified petition for intervention of F. A. Jones, as a stockholder of the above-named defendant, for himself and all other stockholders of the defendant, and the demurrer of the defendant to such petition and upon the hearing of the argument of the counsel representing the respective parties in support of said petition for intervention and said demurrer, the same being by the Court considered, and the demurrer being by the Court overruled, and upon the hearing of the motion of the defendant to dismiss said petition for intervention, and the answer of the defendant thereto, and after hearing evidence, both oral and documentary, in support of the said petition for intervention, and against the same, and the argument of counsel, and

fully considering the same, it was by the Court ordered, adjudged and decreed that said petition for intervention should be allowed and the prayer thereof should be granted, and it appearing that it is necessary and proper that a receiver be appointed for the said defendant, Bankers' Fire Insurance Company, and that said receiver be authorized, directed and empowered to do and perform all such acts as may be necessary and proper to be done for the purpose of caring for and conserving the assets [78] of defendant, wherever the same may be found, taking the same into his possession, and the winding up of the affairs of said defendant, and the returning of all said assets into this court, and that the defendant and each and all of its officers, agents and attorneys and employees be restrained until the further order of this court from the doing and performing of any act or acts in the management, operation or control of the defendant as may in any manner defeat or impair the rights of the defendant or said petitioner in intervention, and from in any manner doing any further business except such as may be done by said receiver and pursuant to the authority herein conferred, and under the direction of the further orders of this Court.

IT IS NOW THEREFORE FURTHER ORDERED, ADJUDGED AND DECREED that Ly-sander Cassidy, a resident of Phoenix, in the State of Arizona, be and he is hereby appointed as Receiver of said defendant, Bankers' Fire Insurance Company, upon his qualifying and the giving of a bond in the sum of Three Thousand (\$3,000.00) Dollars,

with full power and authority to do any and all of the acts necessary in the premises for the full and complete performance of this order and subject to the further orders and rules of this Court in the premises.

Done in open court this 1st day of July, 1914.

(Signed) WM. H. SAWTELLE,
United States District Judge.

[Endorsements]: E—15. In the United States District Court for the District of Arizona. Merchants & Insurers' Reporting Company, Complainant, vs. Bankers' Fire Insurance Co., Defendant. Order Appointing Receiver. Filed Jul. 1, 1914, at — M. George W. Lewis, Clerk. By R. E. L. Webb, Deputy. Law Offices: Stoneman & Ling, 405, 406 and 407 Goodrich Block, Phoenix, Arizona. [79]

*District Court of the United States, for the District
of Arizona.*

MERCHANTS & INSURERS' REPORTING
COMPANY,

Complainant,

vs.

BANKERS' FIRE INSURANCE COMPANY,
Defendant.

Notice of Appeal.

F. A. Jones, having filed his amended petition for leave to intervene in the above-entitled cause, on or about December 20, 1913, and having on or about said date moved this Court for leave to intervene in said

cause, the said Court having on or about the 8th day of April, 1914, granted said relief, and entered an order herein as of said date overruling the demurrer to said amended petition and permitting said F. A. Jones to intervene herein and on or about the 25th day of April, 1914, the said Court having overruled the demurrer of the complainant and defendant to the petition in intervention of said F. A. Jones herein by order entered as of said date, and said Court having on the first day of July, 1914, appointed, on the motion of said F. A. Jones, a receiver herein by order entered as of said date,—

NOW, THEREFORE, come the said Merchants & Insurers' Reporting Company and Bankers' Fire Insurance Company, and hereby appeal from the said order of April 8, 1914, from said order of April 25, 1914, and from said order of July 1, 1914, so made and entered as aforesaid, and also from each and every part thereof, to the Circuit Court [80] of Appeals in and for the 9th Circuit.

Dated, Phoenix, Arizona, this 18th day of July, 1914.

F. C. STRUCKMEYER,
JOS. S. JENCKES,

Solicitors for Merchants & Insurers' Reporting
Company.

R. E. SLOAN,
W. M. SEABURY,
JAMES WESTERVELT,

Solicitors for Bankers' Fire Insurance Company.

[Endorsements]: E—15. Dist. Court of the U. S.
District of Arizona. Merchants & Insurers' Rep.

Company vs. Bankers' Fire Ins. Co. Notice of Appeal. Filed Jul. 18, 1914, at — M. George W. Lewis, Clerk. By R. E. L. Webb, Deputy. Sloan & Westervelt, Fleming Building, Phoenix, Arizona.
[81]

*District Court of the United States for the District
of Arizona.*

MERCHANTS & INSURERS' REPORTING
COMPANY,

Complainant,

vs.

BANKERS' FIRE INSURANCE COMPANY,
Defendant.

Petition for an Order Allowing Appeal.

To the Honorable WILLIAM H. SAWTELLE,
Judge of the District Court in and for the Dis-
trict of Arizona:

The above-named, Merchants & Insurers' Reporting Company and Bankers' Fire Insurance Company respectively, complainant and defendant herein, feeling themselves aggrieved by the order of this Honorable Court made and entered herein on April 8, 1914, whereby the demurrer to the amended petition of F. A. Jones for leave to intervene herein was overruled and said F. A. Jones was allowed to intervene herein by the order made and entered herein on April 25, 1914, whereby the demurrer of complainant and defendant to the petition in intervention herein of said F. A. Jones was overruled and by the order made and entered herein on July 1st, 1914,

whereby Lysander Cassidy, Esq., of Phoenix, Arizona, was appointed receiver of said Bankers Fire Insurance Company, do hereby appeal from said orders of April 8, 1914, April 20, 1914, and July 1, 1914, and each and every part of each of said orders to the Circuit Court of Appeals in and for the 9th Judicial Circuit for the reasons specified in the assignment of errors, which is filed herein and your petitioner prays that its appeal be allowed and that [82] such citation issue as is provided by law, and that a transcript of the records, proceedings and papers upon which said order of April 8, 1914, said order of April 25, 1914, and said order of July 1, 1914, were based, duly authenticated may be sent to the United States Circuit Court of Appeals in and for the 9th Judicial Circuit, sitting at the City of San Francisco, State of California, and your petitioner further prays that the proper order touching the security required by them to perfect their said appeal herein be made, and desiring to supersede the execution of said order of July 1, 1914, petitioners here tender bond in such amount as the Court may require for such purpose and pray that with the allowance of the appeal a supersedeas be issued.

F. C. STRUCKMEYER,

JOS. S. JENCKES,

Solicitors for Merchants & Insurers' Reporting
Company.

R. E. SLOAN,

W. M. SEABURY,

JAMES WESTERVELT,

Solicitors for Bankers' Fire Insurance Company.

[Endorsements]: E.—15. District Court of U. S. District of Arizona. Merchants & Insurers' Reporting Co. vs. Bankers' Fire Ins. Co. Petition for an Order Allowing Appeal. Filed Jul. 18, 1914, at — M. George W. Lewis, Clerk. By R. E. L. Webb, Deputy Sloan, Seabury & Westervelt, Fleming Building Phoenix, Arizona. [82½]

District Court of the United States, for the District of Arizona.

MERCHANTS & INSURERS' REPORTING
COMPANY,

Complainant,

vs.

BANKERS' FIRE INSURANCE COMPANY,
Defendant.

Assignment of Errors.

And now on this 18th day of July, 1914, come Merchants & Insurers' Reporting Company, complainant herein, by its solicitors, F. C. Struckmeyer and Joseph S. Jenckes, and Bankers' Fire Insurance Company, defendant herein, by its solicitors, R. E. Sloan, W. M. Seabury and James Westervelt, and complain and allege:

That the order entered herein on the 8th day of April, 1914, overruling the demurrer of the defendant to the amended petition of F. A. Jones filed herein December 20, 1913, for himself and in alleged behalf of all other similarly situated stockholders of the Merchants & Insurers' Reporting Company, th

complainant herein, for leave to intervene herein, and permitting the filing of the petition in such intervention herein; the order entered herein on the 25th day of April, 1914, overruling the demurrers of the complainant and defendant to the petition in intervention herein of said F. A. Jones for himself and in alleged behalf of all other similarly situated stockholders of the Merchants & Insurers' Reporting Company, the complainant herein, and the order entered herein on the first day of July, 1914, appointing Lysander Cassidy, Esq., as receiver of the Bankers' Fire Insurance Company, the defendant herein, upon the application of [83] said petitioner, are erroneous and unjust to the said Merchants & Insurers' Reporting Company and the said Bankers' Fire Insurance Company, who duly excepted to each and all of said orders and to all the parts thereof, and that the learned District Court of the United States in and for the District of Arizona erred in making said orders of the 8th day of April, 1914, the 25th day of April, 1914, and the 1st day of July, 1914, respectively, in each and all of the following particulars:

I.

The said Court erred in making and entering said order of April 8, 1914, whereby said Court overruled the demurrer of the defendant to the amended petition of F. A. Jones for himself and in alleged behalf of all other similarly situated stockholders of said Merchants & Insurers' Reporting Company, and permitted said F. A. Jones to intervene herein, because said amended petition fails to state facts

sufficient to constitute a cause of equitable cognizance or facts sufficient to constitute cause for intervention herein by said F. A. Jones or any of the other persons therein named.

FIRST: For the reason that a minority stockholder of the complainant has no cause of action against anyone for the alleged extravagance and waste of the directors of the defendant, the stock of which is alleged to be entirely owned by the complainant, in that said cause of action is vested in the complainant or defendant companies against the individual directors of the defendant company.

SECOND: For the reason that said amended petition does not show that the interest of said F. A. Jones [84] or of any other persons therein named in the assets of the defendant are of a sufficiently direct and immediate character to constitute cause for the intervention herein of said F. A. Jones or such other persons, or that said F. A. Jones or such other persons have any interest whatever in the subject of this litigation.

THIRD: For the reason that it appears on the face of the amended petition that neither said F. A. Jones nor any other person therein named is a necessary or proper party to the above-mentioned cause, but, on the contrary, that said Jones and each of said persons is an unnecessary and improper party thereto, because their interests as stockholders of the complainant and the interests of those in the same class are fully and adequately represented in this action both in law and equity by the complainant.

FOURTH: For the reason that said amended petition does not set forth with particularity the efforts of the intervenors to secure such action as he desires on the part of the managing directors of the complainant, or of the stockholders of the complainant, and the causes of his failure to obtain such action, or the reasons for not making such effort, as required by the provisions of Equity Rule XXVII.

FIFTH: For the reason that it appears on the face of said amended petition that the only function which said intervenors seek to perform is to move for the appointment of a receiver of the defendant company and there is no allegation contained in the complaint or in said amended petition that the defendant is insolvent, nor is there any allegation of fraud on the part of defendant's officers and directors or anybody else. [85]

SIXTH: For the reason that it appears on the face of said amended petition that the only function which said intervenor seeks to perform is to move for the appointment of a receiver of the defendant company.

SEVENTH: For the reason that said amended petition does not set forth or allege that the complainant has refused to take the action therein alleged to be desired by its stockholders, to wit, the dissolution of the defendant company and the distribution of its assets, but, on the contrary, it appears therefrom that the complainant is proceeding in the most expeditious and inexpensive manner to dissolve said defendant company.

EIGHTH: For the reason that said amended petition does not set forth or allege any fraudulent or improper act or breach of duty on the part of the complainant or its officers or directors and fails to state facts sufficient to constitute any cause or right of intervention in the above-entitled cause and fails to state facts sufficient to constitute any cause cognizable in equity herein.

II.

The Court erred in overruling by said order of April 25, 1914, the demurrer of the defendant to the petition in intervention filed by F. A. Jones for himself and in alleged behalf of all other stockholders similarly situated of the Merchants & Insurers' Reporting Company, the complainant herein, because said petition in intervention fails to state facts sufficient to constitute cause or right of intervention herein by said F. A. Jones or any other persons therein named, and fails to state facts sufficient to constitute any cause cognizable in equity herein:

FIRST: For the reason that a minority stockholder of the complainant has no cause of action against any one for the alleged extravagance and waste of the directors [86] of the defendant, the stock of which is alleged to be entirely owned by the complainant, in that said cause of action is vested in the complainant or defendant companies against the individual directors of the defendant company.

SECOND: For the reason that the petition in intervention does not show that the interest of said F. A. Jones or of any other persons therein named

in the assets of the defendant are of a sufficiently direct and immediate character to constitute cause for the intervention herein of said F. A. Jones or such other persons, or that said F. A. Jones or such other persons have any interest whatever in the subject of this litigation.

THIRD: For the reason that it appears on the face of the petition in intervention that neither said F. A. Jones nor any other person therein named is a necessary or proper party to the above-entitled cause, but, on the contrary, that said Jones and each of said persons is an unnecessary and improper party thereto, because their interests as stockholders of the complainant and the interests of those in the same class are fully and adequately represented in this action both in law and equity by the complainant.

FOURTH: For the reason that said petition in intervention does not set forth with particularity the efforts of the intervenor to secure such action as he desires on the part of the managing directors of the complainant, or of the stockholders of the complainant, and the causes of his failure to obtain such action, or the reasons for not making such effort, as required by the provisions of Equity Rule XXVII.

FIFTH: For the reason that it appears on the face of said petition in intervention that the only function [87] which said intervenor seeks to perform is to move for the appointment of a receiver of the defendant company and there is no allegation contained in the complaint or in said petition in in-

tervention that the defendant is insolvent, nor is there any allegation of fraud on the part of the defendant's officers and directors or anybody else.

SIXTH: For the reason that it appears on the face of said petition in intervention that the only function which said intervenor seeks to perform is to move for the appointment of a receiver of the defendant company.

SEVENTH: For the reason that said petition in intervention does not set forth or allege that the complainant has refused to take the action therein alleged to be desired by its stockholders, to wit, the dissolution of the defendant company and the distribution of its assets, but, on the contrary, it appears therefrom that the complainant is proceeding in the most expeditious and inexpensive manner to dissolve said defendant company.

EIGHTH: For the reason that said petition in intervention does not set forth or allege any fraudulent or improper act or breach of duty on the part of the complainant or its officers or directors and fails to state facts sufficient to constitute any cause or right of intervention in the above-entitled cause and fails to state facts sufficient to constitute any cause cognizable in equity herein.

III.

The Court erred in appointing a Receiver of the Bankers' Fire Insurance Company, the defendant herein, by order entered July 1st, 1914, upon the application of F. A. Jones for himself and in alleged behalf of all other similarly situated stockholders of said Merchants & Insurers' [88] Reporting Com-

pany, the complainant herein, in each and all of the following particulars:

FIRST: Because the complainant's bill in equity herein was duly filed and served on the 25th day of October, 1913, praying for a dissolution of the defendant and the appointment of its existing directors as its trustees for the purpose of dissolving and winding up the defendant, and that on the same day defendant's answer was duly filed and served herein admitting the truth of each and every allegation contained in the complaint herein and joining in the prayer of the complaint for a dissolution of the defendant, and that thereafter, on November 12, 1913, and prior to the filing of the petition of said F. A. Jones for leave to intervene, a hearing was had herein before the Hon. Wm. H. Sawtelle, Judge of the United States District Court, and that at said hearing after the allegations of the complaint had been proved by competent evidence the defendant by its counsel joined in the prayer for dissolution and the directors of the defendant company offered to the Court to serve as trustees of the properties of the defendant for the purpose of the dissolution of the defendant and the winding up of its affairs in accordance with the directions of the Court and upon such bond as the Court might require without compensation, and that therefore there was no right or cause for the appointment of a receiver of the defendant.

SECOND: Because the petition in intervention herein and the affidavit of P. A. Parker filed in support thereof, upon which the application for the

intervention that the defendant is insolvent, nor is there any allegation of fraud on the part of the defendant's officers and directors or anybody else.

SIXTH: For the reason that it appears on the face of said petition in intervention that the only function which said intervenor seeks to perform is to move for the appointment of a receiver of the defendant company.

SEVENTH: For the reason that said petition in intervention does not set forth or allege that the complainant has refused to take the action therein alleged to be desired by its stockholders, to wit, the dissolution of the defendant company and the distribution of its assets, but, on the contrary, it appears therefrom that the complainant is proceeding in the most expeditious and inexpensive manner to dissolve said defendant company.

EIGHTH: For the reason that said petition in intervention does not set forth or allege any fraudulent or improper act or breach of duty on the part of the complainant or its officers or directors and fails to state facts sufficient to constitute any cause or right of intervention in the above-entitled cause and fails to state facts sufficient to constitute any cause cognizable in equity herein.

III.

The Court erred in appointing a Receiver of the Bankers' Fire Insurance Company, the defendant herein, by order entered July 1st, 1914, upon the application of F. A. Jones for himself and in alleged behalf of all other similarly situated stockholders of said Merchants & Insurers' [88] Reporting Com-

pany, the complainant herein, in each and all of the following particulars:

FIRST: Because the complainant's bill in equity herein was duly filed and served on the 25th day of October, 1913, praying for a dissolution of the defendant and the appointment of its existing directors as its trustees for the purpose of dissolving and winding up the defendant, and that on the same day defendant's answer was duly filed and served herein admitting the truth of each and every allegation contained in the complaint herein and joining in the prayer of the complaint for a dissolution of the defendant, and that thereafter, on November 12, 1913, and prior to the filing of the petition of said F. A. Jones for leave to intervene, a hearing was had herein before the Hon. Wm. H. Sawtelle, Judge of the United States District Court, and that at said hearing after the allegations of the complaint had been proved by competent evidence the defendant by its counsel joined in the prayer for dissolution and the directors of the defendant company offered to the Court to serve as trustees of the properties of the defendant for the purpose of the dissolution of the defendant and the winding up of its affairs in accordance with the directions of the Court and upon such bond as the Court might require without compensation, and that therefore there was no right or cause for the appointment of a receiver of the defendant.

SECOND: Because the petition in intervention herein and the affidavit of P. A. Parker filed in support thereof, upon which the application for the

appointment of a receiver of the defendant herein was made, contain no allegation that the defendant is insolvent or tending to show that defendant is insolvent, or that the officers or directors or those in control of the defendant company have been [89] or are guilty of fraud or breach of duty in managing and controlling the defendant's affairs.

THIRD: Because it is set forth in the bill or in the affidavit of John Austera, F. W. Boynton, H. Y. Stanley, W. A. Johnston and Marshall Stimson, directors of the complainant filed herein in opposition to the application for a receiver of the defendant on April 20, 1914, and proved upon the hearing herein and not denied that the defendant is without debts or liabilities, that the complainant is the owner of all the capital stock of the defendant, and that the Board of Directors of the complainant are desirous of dissolving the defendant without the delay and expense of a receivership.

FOURTH: Because neither the intervenor nor the other persons mentioned in the petition in intervention herein who alone seek a receivership for the defendant herein have any interest in the subject matter of this litigation.

WHEREFORE, the said Merchants & Insurers' Reporting Company and Bankers' Fire Insurance Company pray that said orders of April 8, 1914, April 25, 1914, and July 1, 1914, be reversed for the errors herein assigned, and that the learned Court below be directed to dismiss the receiver of the Bankers' Insurance Company and that the said Merchants & Insurers' Reporting Company and Bank-

ers' Fire Insurance Company have such other and further relief in the premises as to this Court may seem proper.

F. C. STRUCKMEYER and
JOSEPH S. JENCKES,

Solicitors for Merchants & Insurers' Reporting
Company.

R. E. SLOAN,
WM. M. SEABURY, and
JAMES WESTERVELT,

Solicitors for Bankers' Fire Insurance Co. [90]

[Endorsements]: E.—15. District Court of U. S.,
State of Arizona. Merchants & Insurers' Rep. Co.
vs. Bankers' Fire Ins. Co. Assignment of Errors.
Filed Jul. 18, 1914, at — M. George W. Lewis,
Clerk. By R. E. L. Webb, Deputy. Sloan, Seabury
& Westervelt, Fleming Building, Phoenix, Arizona.
[91]

*District Court of the United States for the District
of Arizona.*

MERCHANTS & INSURERS' REPORTING
COMPANY,

Complainant,

vs.

BANKERS' FIRE INSURANCE COMPANY,
Defendant.

**Order Allowing Appeal and Fixing Amount of
Supersedeas Bond.**

It is hereby ordered that an appeal in the above-
entitled cause to the Circuit Court of Appeals of the

9th Circuit be and is hereby allowed as prayed and that it operate as a supersedeas, and that the order of the District Court of the United States for the District of Arizona herein, dated the first day of July, 1914, be, and it is hereby superseded pending said appeal and until the same is finally heard and determined upon the appellant's, Merchants & Insurers' Reporting Company and Bankers' Fire Insurance Company, filing a bond in the sum of Five Thousand Dollars, with sufficient surety, conditioned as required by law, and that if the said Merchants & Insurers' Reporting Company and Bankers' Fire Insurance Company, do prosecute the same to effect and if they fail to make their appeal good, shall pay and answer all damages, costs, charges and interest in the said cause, then the said obligation to be void.

Done in open court this 18th day of July, 1914.

WM. H. SAWTELLE,

Judge of the District Court of the United States for
the District of Arizona. [92]

[Endorsements]: E.—15. District Court of U. S., District of Arizona. Merchants & Insurers' Rep. Co. vs. Bankers' Fire Insurance Co. Order Allowing Appeal and Fixing Supersedeas Bond. Filed Jul. 18, 1914, at — M. George W. Lewis, Clerk. By R. E. L. Webb, Deputy. Sloan, Seabury & Westervelt, Fleming Building, Phoenix, Arizona. [93]

*District Court of the United States for the District
of Arizona.*

MERCHANTS & INSURERS' REPORTING
COMPANY,

Complainant,

vs.

BANKERS' FIRE INSURANCE COMPANY,
Defendant.

Supersedeas Bond.

KNOW ALL MEN BY THESE PRESENTS:

That we, Merchants & Insurers' Reporting Company and Bankers' Fire Insurance Company, as principals, and National Surety Company, a corporation, organized and existing under and by virtue of the laws of the State of New York, and authorized to do business as a Surety Company in the State of Arizona, as surety, acknowledge ourselves to be indebted jointly and severally to F. A. Jones, Esq., and to Lysander Cassidy, Esq., as Receiver of the Bankers' Fire Insurance Company, for the benefit of said Jones and such other stockholders of Merchants & Insurers' Reporting Company as may be damaged by the pendency of the appeal hereinafter described, in the full sum of Five Thousand (\$5,000) Dollars, conditioned that,

WHEREAS, on or about the 8th day of April, 1914, in the District Court of the United States for the District of Arizona, in an issue pending in that court wherein Merchants & Insurers' Reporting Company was complainant and the Bankers' Fire

Insurance Company was defendant, an order was entered overruling the demurrer to the amended petition of said F. A. Jones for leave to intervene herein and granting to said F. A. Jones leave to intervene in said cause; and [94]

WHEREAS, on or about the 25th day of April, 1914, in said District Court of the United States for the District of Arizona in said cause an order was entered overruling the demurrers of the complainant and defendant to the petition of intervention herein of said F. A. Jones; and

WHEREAS, on or about the first day of July, 1914, in said District Court of the United States for the District of Arizona in said suit, an order was entered appointing Lysander Cassidy receiver of the said Bankers' Fire Insurance Company and the said Merchants & Insurers' Reporting Company having obtained an appeal to the Circuit Court of Appeals in and for the 9th Judicial Circuit from the said order of April 8, 1914, said order of April 25th, 1914, and said order of July 1st, 1914, which has been duly filed in the office of the clerk of the court to reverse the said orders and a citation directed to the said F. A. Jones, Esq., and the said Lysander Cassidy Esq., as receiver of the Bankers' Fire Insurance Company, citing and admonishing them to be and appear at a session of the United States Circuit Court of Appeals in and for the Ninth Judicial Circuit to be holden in the City of San Francisco within thirty days of the date of said citation:

Now, if the said Merchants & Insurers' Reporting Company and Bankers' Fire Insurance Company

shall prosecute their appeal to effect and if they shall fail to make good said appeal and to obtain the reversal of the several orders appealed from, shall answer and pay to the obligees in this bond all damages which they may sustain by reason of the suspension of said orders and stay of proceedings thereon and costs of this appeal, then the above obligation to be void, otherwise to remain in full force and virtue.

And said bond and obligation is upon the further [95] express condition and agreement by the sureties thereto, that in case of a breach of the condition set forth herein, this Court may upon notice to said sureties of not less than ten days proceed summarily in said action or suit in which this bond is given to ascertain the amount which said sureties are bound to pay on account of such breach of said bond and undertaking and render judgment against the said sureties, and each of them, and award execution thereon.

[Seal] MERCHANTS & INSURERS' RE-
PORTING CO.

By JOHN CASTERA,

Pres.

[Seal] BANKERS' FIRE INSURANCE
COMPANY,

By LEROY H. CIVILLE,

President.

NATIONAL SURETY COMPANY,

By CATESBY C. THOM,

Attorney in Fact.

Approved as to form and sufficiency of the surety
this 25th day of August, 1914.

WM. H. SAWTELLE,
Judge of the District Court of the United States for
the District of Arizona. [96]

State of California,
County of Los Angeles,—ss.

On this 31 day of July, in the year one thousand
nine hundred and fourteen, before me, William M.
Curran, a Notary Public in and for said County
and State, residing therein, duly commissioned and
sworn, personally appeared Catesby C. Thom, known
to me to be the duly authorized attorney in fact of
National Surety Company, and the same person
whose name is subscribed to the within instrument
as the attorney in fact of said company, and the said
Catesby C. Thom acknowledged to me that he sub-
scribed the name of National Surety Company
thereto as principal, and his own name as attorney
in fact.

IN WITNESS WHEREOF, I have hereunto set
my hand and affixed my official seal the day and year
in this certificate first above written.

[Notarial Seal]

(Signed) WILLIAM M. CURRAN,
Notary Public in and for Los Angeles County, State
of California.

[Endorsements]: District Court of U. S., District
of Arizona. Merchants & Insurers' Rep. Co. vs
Bankers' Fire Ins. Co. Supersedeas Bond. Filed
Aug. 26, 1914, at — M. George W. Lewis, Clerk

By R. E. L. Webb, Deputy. Sloan, Seabury & Westervelt, Fleming Building, Phoenix, Arizona. [97]

*In the United States District Court for the District
of Arizona.*

No. E.—15 (Phoenix).

MERCHANTS AND INSURERS' REPORTING
COMPANY,

Complainant,

vs.

BANKERS' FIRE INSURANCE COMPANY,
Defendant.

Praeipice for Transcript of Record.

To the Clerk of the United States District Court for
the District of Arizona:

You will please prepare a transcript of the complete record in the above-entitled cause to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Judicial Circuit, under the appeal to said court in said cause, and include in said transcript the following proceedings, pleadings, papers, records and files, to wit:

Bill in Equity;

Answer;

Amended Petition to Intervene;

Opposition to Amended Petition signed by six
individuals;

Opposition to Amended Petition signed by John
Otto;

100 *Merchants & Insurers' Reporting Co. et al.*

San Francisco, California, to and including the 8th day of September, A. D. 1914.

GEORGE J. STONEMAN,

REESE M. LING,

Attorneys for Intervenor.

R. E. SLOAN,

JAMES WESTERVELT,

Attorneys for Defendant.

Dated at Phoenix, Arizona, this 28th day of August, A. D. 1914. [101]

[Endorsements]: No. E.—15 (Phoenix). In the United States District Court for the District of Arizona. Merchants & Insurers' Reporting Co., Plaintiff, vs. Bankers' Fire Insurance Company, Defendant. F. A. Jones, Intervenor. Stipulation Agreeing to the Enlargement of Time Within Which to File Transcript of Record. Filed Aug. 28, 1914, at — M. George W. Lewis, Clerk. By R. E. L. Webb, Deputy. [102]

In the United States District Court for the District of Arizona.

No. E.—15 (Phoenix).

MERCHANTS & INSURERS' REPORTING
COMPANY,

Plaintiff,

vs.

BANKERS' FIRE INSURANCE COMPANY,
Defendant.

F. A. JONES,

Intervenor.

**Order Under Rule 16, Section 1, Enlarging Time to
September 8, 1914, to File Record Thereof and
to Docket Case.**

In accordance with a stipulation of counsel herein, filed August 28, 1914, and good cause therefor appearing,

IT IS ORDERED that the time within which the original certified Transcript of the Record in the above-entitled cause may be filed, and within which the cause may be docketed with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, be, and hereby is enlarged to and including the 8th day of September, A. D. 1914, and that this order be now entered of record as of and for the 18th day of August, A. D. 1914.

(Signed) WM. H. SAWTELLE,
Judge of the United States District Court for the
District of Arizona.

Dated at Tucson, Arizona, this 29th day of August,
A. D. 1914. [103]

[Endorsements]: No. E.—15 (Phoenix). In the United States District Court for the District of Arizona. Merchants & Insurers' Reporting Co., Plaintiff, vs. Bankers' Fire Insurance Company, Defendant. F. A. Jones, Intervenor. Order Enlarging Time Within Which to File Transcript of Record. Filed Aug. 29, 1914, at — M. George W. Lewis, Clerk. By R. E. L. Webb, Deputy. [104]

*In the United States District Court for the District
of Arizona.*

No. E.—15 (Phoenix).

MERCHANTS & INSURERS' REPORTING CO.,
Complainant,

vs.

BANKERS' FIRE INSURANCE COMPANY,
Defendant.

F. A. JONES,

Intervenor.

**Certificate of Clerk U. S. District Court to
Transcript of Record.**

United States of America,
District of Arizona,—ss.

I, George W. Lewis, Clerk of the United States District Court for the District of Arizona, do hereby certify that the one hundred four (104) typewritten pages, numbered from one (1) to one hundred four (104), inclusive, to be a full, true, correct and complete copy of so much of the record, papers, and other proceedings in the above and foregoing entitled cause as are necessary to the hearing of said cause, and as is stipulated for by counsel of record herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the record on appeal from the judgment of said United States District Court for the District of Arizona, to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the defendant for the preparation and certification of the typewritten transcript of record issued to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled [105] cause, to wit:

Clerk's fee (Sec. 828 R. S. U. S., as Amended by Sec. 6, Act of March 2, 1905), for mak- ing typewritten transcript of record, 255 folios, at 20¢ per folio.....	\$51.00
Certificate of Clerk to typewritten transcript of record, 3 folios, at 30¢ per folio.....	.90
Seal to said Certificate.....	.40
	<hr/>
	\$52.30

I hereby certify that the above cost for preparing and certifying record, amounting to \$52.30, has been paid to me by Messrs. Richard E. Sloan, Wm. M. Seabury and James Westervelt, attorneys for defendant.

I further certify that I hereto attach and herewith transmit the original Citation, issued in his cause.

IN WITNESS WHEREOF, I have hereto set my hand and affixed the Seal of said District Court at Phoenix, in said District, this 3d day of September, A. D. 1914.

[Seal]

GEORGE W. LEWIS,
Clerk.

By Robert E. L. Webb,
Deputy Clerk. [106]

*District Court of the United States, for the District
of Arizona.*

E.—15.

MERCHANTS & INSURERS' REPORTING
COMPANY,

Complainant,

vs.

BANKERS' FIRE INSURANCE COMPANY,
Defendant.

Citation [on Appeal (Original)].

President of the United States of America, to F. A.
Jones, Esq., and Lysander Cassidy, Esq., as Re-
ceiver for the Bankers' Fire Insurance Com-
pany:

You are hereby notified that in a certain case in equity in the United States District Court in and for the District of Arizona, wherein Merchants & Insurers' Reporting Company is complainant, and Bankers' Fire Insurance Company is defendant, and F. A. Jones is an intervenor, and wherein Lysander Cassidy, Esq., has been appointed by said court receiver of said Bankers' Fire Insurance Company by order dated July 1, 1914, an appeal has been duly allowed to Merchants & Insurers' Reporting Company and Bankers' Fire Insurance Company to the Circuit Court of Appeals in and for the 9th Judicial Circuit. You and each of you are hereby cited and admonished to be and appear in the said court at the City of San Francisco, State of California, within thirty days from the date of this citation, to show

cause, if any there be, why the order of April 8, 1914, overruling the demurrer to the amended petition of said F. A. Jones for leave to intervene herein and permitting said F. A. Jones to intervene herein, the order of April 25, 1914, overruling the demurrer of complainant and defendant to the petition in intervention herein of said F. A. Jones, and the order of July 1, 1914, appointing Lysander Cassidy, Esq., as receiver of the Bankers' Fire Insurance Company, each of which is appealed from herein, [107] should not be corrected and speedy justice done to the parties in that behalf.

WITNESS the Honorable WILLIAM H. SAWTELLE, Judge of the United States District Court in and for the District of Arizona, this 18th day of July, 1914.

WM. H. SAWTELLE,
Judge of the United States District Court for the
District of Arizona.

Service accepted Aug. 8, 1914.

GEORGE J. STONEMAN,
REESE M. LING,

Solicitors for F. A. Jones, Intervenor. [108]

[Endorsed]: E.—15. In the Dist. Ct. of the U. S. for District of Arizona. Merchants & Insurers' Rep. Co. vs. Bankers' Fire Ins. Co. Citation. Filed Jul. 18, 1914. George W. Lewis, Clerk. By R. E. L. Webb, Deputy. [109]

[Endorsed]: No. 2477. United States Circuit Court of Appeals for the Ninth Circuit. Merchants & Insurers' Reporting Company, a Corporation, and Bankers' Fire Insurance Company, a Corporation, Appellants, vs. F. A. Jones, Intervenor, and Ly-sander Cassidy, as Receiver of the Bankers' Fire Insurance Company, a Corporation, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the District of Arizona.

Received and filed September 5, 1914.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.